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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 116.

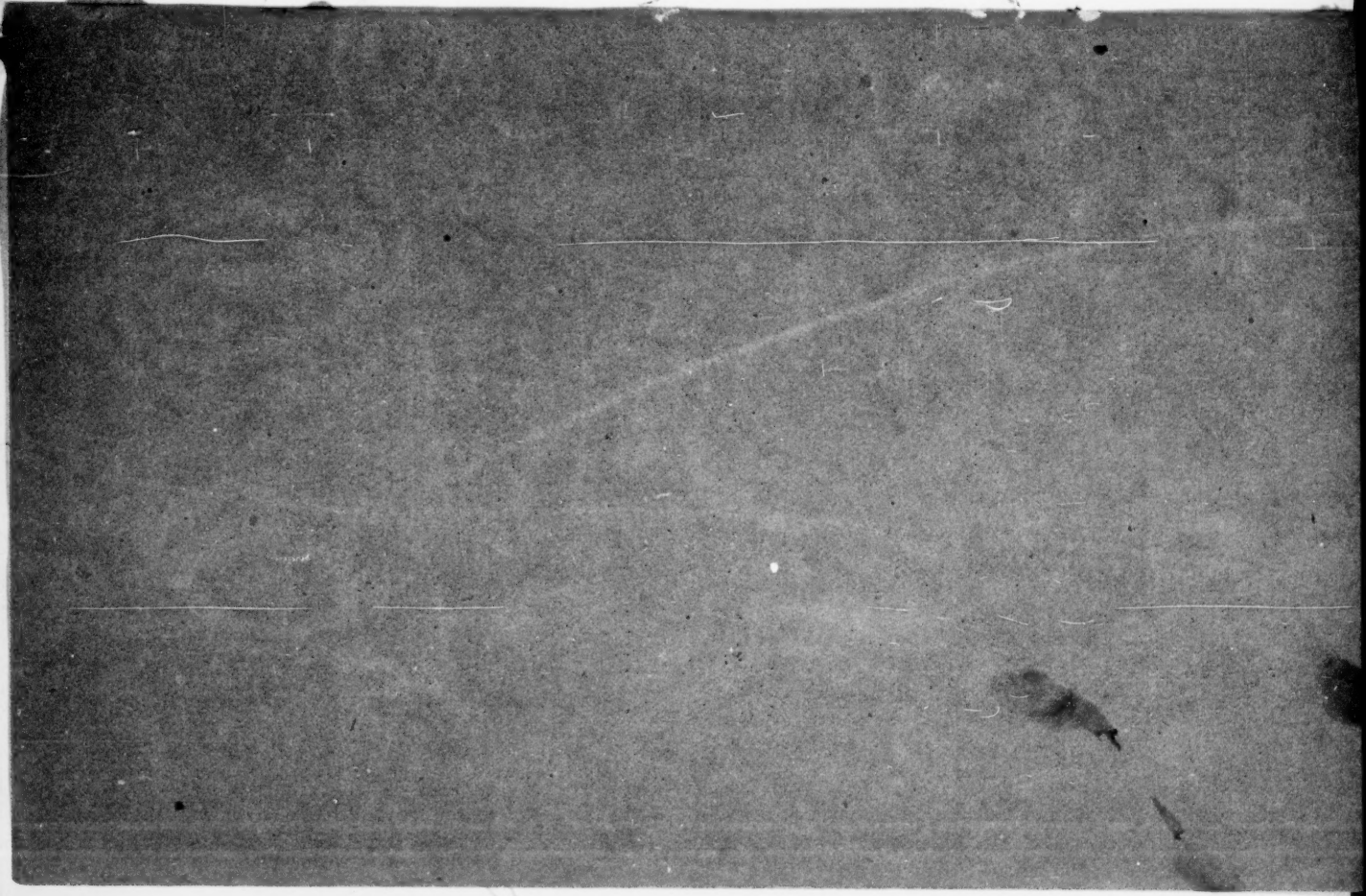
PATRICK SHERRY AND DENNIS SEXTON, PLAINTIFFS IN ERROR,

vs.

ANDREW McKINLEY AND LUTHER T. THURSTON, EXECUTORS AND TRUSTEES OF JOHN McKINLEY, DECEASED, ASHLEY McKINLEY, ET AL.

IN ERROR TO THE SUPREME COURT OF TENNESSEE.

FILED MAY 1, 1876.



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INDEX.

	Original.	Print.
Bill	1	1
McKinley's will	15	5
Answer of Sherry	30	9
Tax-sale certificates	38	11
Answer of Saxton	41	12
Agreement of counsel	43	13
Deposition of J. D. Coffee	44	13
W. H. Morgan	49	14
M. T. Williamson	53	16
Mary N. Young	59	17
Mary E. Pope	62	18
Abstract of title	63	18
McLemore & Weakly grant	72	21
Deposition of B. R. Thomas	78	23
D. Saxton	88	26
Answer and cross-bill of D. Saxton	101	29
Amended bill	106	31
Deed, White, clerk and master, to Bragg	114	33
Affidavit of W. L. Scott	123	35
Appointment of Adams guardian ad litem	126	36
Deposition of R. M. Patton	132	38
Deed, Bragg to Patton	135	39
Will of McKinley	139	41
Answer of D. Saxton	154	45
Deposition of M. R. Parrish	165	48
Reference to master	176	51

	Original.	Print.
Master's report	177	52
Order confirming report	178	52
Decree	183	54
Order reviving in name of McCrea	189	56
Order of court	190	56
Decree	200	59
Decree for possession of land	215	63
Appeal to supreme court of State	218	64
Bond	220	65
Decree of supreme court	222	65
Opinion	229	66
Writ of error	236	68
Bond	239	69
Clerk's certificate	242	69
Citation and service	244	70

1 THE STATE OF TENNESSEE.

Pleas before the supreme court of the State of Tennessee, for the western division, at Jackson, on the fourth Monday in September, A. D. 1875.

Present, Hon. A. O. P. Nicholson, chief justice, and Robert McFarland, Thomas J. Freeman, James W. Deaderick, Peter Turney, and John L. T. Sneed, associate judges.

Be it remembered that heretofore, to wit, on the 19th day of April, 1872, the following transcript of a record was filed in the office of the clerk of the supreme court of Tennessee, at Jackson, to wit:

ANDREW MCKINLAY ET AL.
v.
PATRICK SHERRY ET AL.

First chancery court of Shelby County.

STATE OF TENNESSEE,
Shelby County, ss:

Pleas before the honorable R. J. Morgan, chancellor of the first
2 chancery court of Shelby County, held in the city of Memphis and State and county aforesaid, and at the October term thereof, 1871.

Be it remembered, that heretofore, to wit, on the 7th day of May, 1867, Andrew McKinley et al. filed their bill of complaint against Patrick Sherry et al. in the chancery court of Memphis, in the words and figures following, viz:

Original bill.

To the Hon. W'm M. Smith, judge of the chancery court of Memphis:

The bill of complaint of Andrew McKinley, of the city of New York, in the State of New York, and Luther T. Thurston, of the State of Kentucky, executors and trustees of the last will and testament of John McKinley, deceased; Ashley McKinley, Elizabeth A. McKinley,
3 Anna C. McKinley, Mary C. McKinley, Crittenden McKinley, Andrew McKinley, jr., and Pope McKinley, of the said city of New York, minors under the age of twenty-one years, who sue by their next friend, Andrew McKinley; Mary Churchill, of the city of Louisville, State of Kentucky, and Mary Moss Churchill, of the same place, a minor under the age of twenty-one years, who sues by her mother and next friend, Mary Churchill aforesaid; Julia January and her husband, Derick A. January, of the city of St. Louis, State of Missouri, and Robert M. Patton, of the State of Alabama, vs. Patrick Sherry and Dennis Saxton, of the county of Shelby, State of Tennessee, respectfully show to your honor that John McKinley, deceased, and complainant, Robert M. Patton, were in the lifetime of the said McKinley, who is now dead, jointly interested in and possessed of certain lands near the city of Memphis, county of Shelby, consisting of two lots lying in the civil
4 district of Shelby County, known and described as lots Nos. 31 and 32 of the Weakley tract of land, containing each some six and a half acres, more or less, being the property conveyed by Henry A. Bragg, and held in undivided mo'ties by the said John M. McKinley and Robert M. Patton as tenants in common under the laws of Tennessee, and that said property was not, nor was any part of it, ever divided or held by them or either of them or severally.

That prior to the fourth day of August, 1852, the said John McKinley departed this life, having just made and published his last will and tes-

tament, a copy of which is exhibited and prayed to be taken as part of this bill (but is not to be copied), wherein and whereby he directs, amongst other things, that one-half an undivided half of thirteen acres of land conveyed to me (him, the said John McKinley), by Henry A. Bragg, lying in or near the city of Memphis, Tenn. (being the
5 same lands above-mentioned), shall be sold by complainant, Andrew McKinley, as trustee, with several other tracts of land and other property not involved in this controversy; and further directed that one-half of the proceeds of all said property, together with one-half of all monies due him, and not otherwise appropriated by said will, should, when received, be invested by the said Andrew McKinley in real estate in or near the city of Louisville, to be held by him for the term of his natural life, then to be equally divided amongst his children in fee simple, said children now in being complainants Ashley, Elizabeth A., Anna C., Mary C., Crittenden, Andrew, jr, and Pope McKinley. The other half of all said funds he directed to be invested by his said son (the said Andrew McKinley) in productive real estate in the city of Louisville, and held in trust by him for his said daughter, Mary Churchill (the complainant above named), during her life, and then for her children until they respectively arrive at full age, when the same
6 shall be equally divided between them, her children, being complainants Mary Moss Churchill and Julia January aforesaid.

After the death of the said John McKinley, complainant Andrew McKinley, jointly with the said complainant Robert M. Patton, entered into the said lands, and finding it undesireable to sell, and impracticable upon such terms as he judged to be advisable, continued so to hold them until some time in the year 1864, his holding being as trustee under the provisions of the said will, and with a view to carry out its directions, when he should judge it proper and profitable so to do.

While matters were in this condition the war between the United States and the Southern States thereof came on, and the city of Memphis being occupied by the forces of the United States, and military possession held thereof, communications for civilians was greatly obstructed and rendered difficult, and it was not practicable for complainant, the said Andrew, to protect the possession of the said
7 property. While the said Robert M. Patton, being a citizen of the State of Alabama and residing therein, was not able by any lawful means to communicate with the said city of Memphis or county of Shelby, the said State of Alabama being within the lines of military occupation of the Confederate States or the States resisting the authority of the United States.

Complainants charge that before peace was restored and free communication was permitted and allowed with the said city of Memphis, the defendant, Patrick Sherry, obtained possession of the said lots, and has now the possession of one of them, the other being held by the defendant, Dennis Saxton, under a pretended purchase and a deed from the said Patrick Sherry to him of the date of .

Complainants are informed and believe that the said Sherry claims to have purchased the said lots at a sale of the same by the commissioners of the United States for the collection of direct taxes.

8 Complainants charge that no assessment was ever made of said lots held by them in the manner above stated. They state that they are informed that the said defendants claim that the said lot No. 31 was assessed and advertised under the description "Patton, R. M., part Weakley grant, lot 31, $6\frac{54}{100}$ acres, $2,000; tax, 7.00; penalty, 3.50"; but complainants insist that the property of the said R. M. Pat-

ton is other and different from the said lot No. 31, and that he owned no such lot in severally, but that his property in the Weakley grant lay near to and adjacent the said lots, consisting of several lots, making in all 180 acres of land in the same civil district.

Complainants further charge that the said lot 32 was never assessed, advertised, or sold. Complainants are informed and believe that the said defendant, Sherry, claims that the same was so sold, and he shows, as the paper under which he claims the same, a certificate of the sale of a lot of similar number in the Manly tract or grant, in which
9 complainants were never interested.

Complainants charge that the tax sales made in and for the said county of Shelby are null and void for the following reasons, and that if the said property was sold the sales thereof are for these reasons of no validity:

1st. The act of Congress under which the same were made is unconstitutional and void, being repugnant to the Constitution of the United States, and that it conferred no authority to assess taxes or collect the same, or to make sales thereunder.

2nd. The said tax commissioners made an excessive assessment unauthorized by the said act itself, if valid; they having levied and collected thirty-five cents on the hundred dollars' worth of property, independent of the penalty, when by the terms of said act they would have been authorized, had the act been valid, to levy only twenty-seven and three-fourths cents on the hundred dollars in value; and, if it shall be shown that the lots herein mentioned were assessed, it will appear
10 that they as all the other property in or around Memphis which was sold were assessed at the rate first above mentioned.

Complainants charge that the said commissioners had access to the books of assessment for Shelby County for the year 1860, from which, by the said supposed act of Congress for the collection of taxes in insurrectionary districts, they were directed to make their assessments, and so that there was no excuse for the excessive assessments and levy of the said taxes.

3d. Complainants state the said commissioners proceeded to put said act in force, and entered into the discharge of the functions of their supposed office before the time contemplated or the condition of affairs provided for in said act had occurred, to wit, the military occupation by the United States forces of the whole county of Shelby.

4th. The said commissioners failed to advertise the sale of property as the manner required by said supposed act, which provides that the commissioners shall cause such sales to be advertised in a news-
11 paper published in the town or county where the property is situated. Complainants charge that the sale of their property was never advertised at all, and that if any advertisement was made intended to cover the same it was not made in any newspaper whatever. That the only advertisement of any sale which did take place in the county of Shelby (several newspapers being published at the time in the city of Memphis) was on a sheet, not attached to or part of any newspaper whatever, and not even circulated with or sent to the subscribers or patrons of any newspaper, and of which sheet only a small number of copies, not more than one-fifth of the number that were issued of the newspaper, were issued or printed. That the daily circulation of the Bulletin newspaper was at that time five thousand or upwards, as they are informed and believed, and that not more than one thousand copies of the said advertisements were issued or printed. That at the head of said advertisements is printed in small capitals,

12 Memphis Morning Bulletin Supplement, from which complainants suppose it is intended that said sheets should be considered as a supplement to said newspaper. But the provisions of said act require, if valid, that such advertisement should be in a newspaper, not in a handbill or broadside, and that calling a handbill a supplement will not make it—a thing entirely different from either—"a newspaper."

5th. The only advertisement made of sales of land for direct taxes by said commissioners fixed the day of sale as the 13th day of June, 1864, whereas the said defendants claim to have bought the said lots on different days, each later than the 13th day of June, and neither of them on that day. and complainants are advised that such sale could not, under said act, if valid, have continued from day to day, no provision being contained therein for any such continuance, but the said act requiring expressly the advertisement to be made at least four weeks previ-

13 ous to the day of sale. The sheet, the said paper, was not in fact published at the time it bears date, and was never issued until within the four weeks of the day fixed for said sale, but was in fact just issued on the day of May, 1864; that if, in point of fact, either of said lots was assessed and sold, in consequence of these things, such sale is wholly void, and the act of the said defendants in holding the property and claiming the same is illegal and against equity and good conscience; but that notwithstanding they hold and have the same, and claim to hold and have instruments of title which, they assert, cover the said property, and which, taken in connection with their unlawful possession, will constitute a cloud upon the title. That it is impossible for the complainant, McKinley, as trustee and executor, the trusts devolved on him by sale, while the property is adversely held, and that they are advised that this honorable court, in aid of a trustee, will place him in possession of the property, to enable him to carry out the trust devolved

14 upon him by said will; that it will be impracticable fully to carry out this policy without a division with complainant Patton; and that they are advised that no partition can be effectually made, and no beneficial sale made, until the title is quieted and the cloud removed. Complainants further state that, by reason of the fact that the legal title to said lands does not rest in him, but in the heirs of the said John McKinley, he is not, by reason of his trust, clothed with the power to recover the property at law.

Complainants further state that said will of the said McKinley was duly proved in the probate court of Jefferson County, Kentucky, and a copy duly certified to the county of Shelby, where the same has been duly admitted to record in the county court of said county. The premises considered, complainants pray that the defendants named in the caption be made parties defendant to this bill, and that process issue; that the said sale for taxes be set aside and declared void; and

15 that the said defendants be decreed to deliver up for cancellation any papers they may have relating to the title to said premises, and under which they presume to claim the said premises, that the premises be delivered up, and they be required to file with the answer all the papers relating to their pretended title, and that they be decreed to account for the reasonable rents and profits, damages, waste, &c., resulting from their having wrongfully obtained possession of the said premises, and all such other and further relief as the nature of the case may require.

HEISKELL, SCOTT & HEISKELL,
Sol's.

Filed 7th day of May, 1867.

A. ALSTON, *Clerk & Master.*

Copy of John McKinley's will.

I, John McKinley, of the county of Jefferson and State of Ken-
16 tucky, do make, ordain, and establish this my last will and testa-
ment, hereby revoking all former papers of a testamentary char-
acter by me executed.

First. I give and bequeath to my wife the house and lot in the city of Louisville, on the south side of Main street, between Fifth and Sixth street', conveyed to me by Stewart and Owen, to be held by her during her natural life. Also, the lot on the west side of Fourth street in said city, fifty-nine and a half feet front, and running back two hundred feet on Curran street, to be held by her in fee simple. If a house is not built thereon during my life, I direct my executors, after first paying my debts, to erect a house and make other necessary improvements on said lot, including paving and grading, not exceeding in cost the sum of thirty-six hundred dollars. I also direct my executors to purchase real estate for my wife in the city of Louisville, which she shall hold during her natural life, which shall yield an annual income of three hundred
17 dollars, or they shall pay to her during life said annual sum of three hundred dollars, in quarterly payments, out of the general income of the estate hereinafter directed to be purchased.

I also give and bequeath to my said wife, to be held during her natural life, the following slaves, to wit: Daniel, a negro man, about twenty-one years of age; Charlotte, a negro woman, about twenty-three years old, and her three children; and Nelly, a negro girl, about eleven years old; and Jerry, a boy about eight years old.

I also give and bequeath to her, for the term of her natural life, my carriage and horses, and such household furniture as she may select.

Second. In addition to what I have already given my son, Andrew McKinley, I give and bequeath to him the house and lot where I now reside, for the term of his natural life, remainder to his children in fee simple, being that part of a tract of sixteen acres purchased of
18 Samuel Churchill, beginning at the northeast corner of said tract and running thence westwardly with the southern line of Kentucky street, fourteen poles to a stone, the corner of a lot conveyed to said Andrew in trust for his sister, Mary Churchill, and her children; thence southwardly along the line of said last-mentioned lot, to the southern line of said sixteen-acre lot; thence eastwardly along said southern line to the Flat Lick road, thence along the western line of said road to the beginning.

I also give and bequeath to him Spencer, a negro man, about forty-five years of age, and Edy, his wife, and Thomas, son of said Spencer, and Edy, about four years of age; also the law and political books contained in the library.

Third. I direct my son, as trustee, to sell the following property, to wit: A house and lot on the north side of Market street, in Louisville, between Fifth and Sixth streets, conveyed to me by Andrew Bu-
19 chanan and wife; two lots, one in the town of Portland and one in Shippingport, in the county aforesaid, conveyed to me by John Rowane and wife; an undivided one-half of thirteen acres of land conveyed to me by Henry A. Bragg, lying in or near the city of Memphis, Tennessee. Also, two tracts of land, one containing about one hundred acres, the other about forty-three acres adjoining the town of Florence, Alabama. Also, a four-acre lot with a dwelling-house thereon known as my former residence, together with the lots adjacent thereto, in all containing about twenty-two acres. Also, seventy-five shares of stock

in the Florence Bridge Company. Also, all my other unimproved lots in said town of Florence, and lands adjacent thereto. Also, a tract or tracts of land containing between seven and eight hundred acres, patented to me by the United States, and lying in the county of Lawrence, Alabama. Also, a house and lot and adjacent lot in the town of Fri-
ance, in the last-named State. Also, a tract of land containing
20 one hundred and five acres and one-hundredth of an acre, lying in the county of Lauderdale, Alabama, at the foot of Big Muscle Shoals, including the Campbell's ferry landing. Also, Otter Island, lying in the Tennessee River, containing fifty-two acres, being just above the ferry known as Lamb's ferry. Also, a negro girl named Martha, aged about twelve years.

One-half of the proceeds of all such sales, together with one half of all monies due me, and not otherwise appropriated by this will, shall, when received, be invested by said Andrew McKinley in real estate in or near the city of Louisville, to be held by him for the term of his natural life, then to be equally divided among his children in fee simple.

The other half of all said funds shall be invested by my said son in productive real estate in the city of Louisville, and held in trust by him for my said daughter, Mary Churchill, during her life, and then for her children until they respectively arrive at full age, when the same
21 shall be equally divided between them.

Fourth. I give and devise to my said son and his heirs forever, all my interest in the mills property lying on the west side of Seventh street, in Louisville, conveyed to Luther T. Thurston and myself by Willis Hodges, subject to my contract with said Thurston; one-half to be held by him during his life and remainder to his children in fee simple. The other half to be held by him in trust for my daughter, Mary Churchill, during her life with remainder to her children forever. I empower my said son, however, if he shall see fit, to sell my interest in said mills property, giving said Thurston the preference in making said sale, and invest the proceeds in the manner and for the purposes expressed in third clause of this will.

Fifth. My will is that at the death of my wife the real estate hereinbefore bequeathed to her for life shall be held one-half by my said son for and during the term of his natural life, remainder to his chil-
22 dren in fee simple; the other half shall be held by him and his heirs forever in trust for my daughter, Mary Churchill, during her life, and then to be equally divided between her children as they become of full *of* age.

Sixth. I direct, at the death of my wife, the silver and plated ware to be divided as follows:

I give to my son Andrew McKinley the tea sett and all the spoons. The pitcher, tumblers, forks, and plated ware I give to my said son, in trust for my daughter, Mary Churchill, she to have the use of the same during her life, and then to my granddaughter, Julia Churchill—if she be living—otherwise to Mary Moss Churchill. The negroes and other personal property shall be equally divided, one-half to go to my said son Andrew McKinley, and the other half to be held by him in trust for my said daughter, Mary Churchill, during her life, and then for her children.

Seventh. I give and bequeath to my son, in trust for my said
23 daughter, Mary Churchill, during her life, and then to her children, all the miscellaneous books contained in my library.

Eight. I direct the rents and profits growing out of the estate held

by said son in trust for my daughter, Mary Churchill, and her children, after paying repairs, insurance, taxes, and the expenses of his trust, to be devoted to the maintenance and support of her family, the education of her children, and to no other purpose whatever.

Ninth. After the death of my said daughter Mary Churchill, I direct both the real and personal estate herein granted to my son in trust for her benefit during her natural life (except the silver which I have already disposed of in the sixth clause of this will) to be distributed and conveyed in equal portions to her children in fee simple whenever they respectively obtain full age or marry.

Tenth. I direct my executor to invest the sum of one thousand dollars (which has been placed in my hands for that purpose by
24 Miss Sallie Elyry and my wife) in productive real estate in the city of Louisville, yielding an annual income of at least ten per cent. for Elizabeth N. Pope, of Mississippi, the niece of my wife, and to convey the same to a suitable trustee for her sole and separate use during her life, remainder to her heirs, or to invest said sum of one thousand dollars in a lot in said city, unimproved, with power to the trustee to sell a part thereof when he may think it proper and beneficial, and to improve with the proceeds of said sale the remainder thereof.

Eleventh. I give and bequeath my watch to such grandson as may first arrive at the age of twenty-one years.

Twelfth. No change I may make during my life in my estate, either by the sale of any part thereof, nor by the purchase of any other property, shall affect the provisions of this will as to remaining part or party thereof; but any property or money thus acquired shall pass
25 to my said son and be disposed of according to the general provisions of this will.

Thirteenth. I hereby appoint my son Andrew McKinley and my friend Luther F. Thurston executors of this will, and direct that no bond or security be required of them. I direct my son, as trustee for my said daughter, Mary Churchill, both as to the property contained in a deed of trust bearing even date herewith to file an annual account of all receipts and expenditures of said trust estate in the office of the clerk of the county court of Jefferson County aforesaid, after submitting said account to said Luther F. Thurston, whose certificate of its correctness shall be a good voucher and operate as a discharge to the trustee.

This will is signed, acknowledged, and executed as my last will and testament, in the presence of the subscribing witnesses, who are requested by me to attest the same as such; and I being unable from bodily infirmity to write my own name, the same is written by Henry
26 Pirtle at my request and in my presence, this the twenty-second day of March, 1852.

(The words "and his heirs forever," which are interlined twice on the fourth page of this will, were written before the same, was executed by the testator.

JOHN McKINLEY.

Signed by Henry Pirtle for the testator, in his presence, at his request, and in the presence of each of us, and in his presence signed each of us.

HENRY PIRTLE,
N. WOLFE,
THOS. P. SMITH.
Witnesses.

STATE OF KENTUCKY:

At a county court held for Jefferson County, at the court-house in the city of Louisville on the fourth day of August, 1852, the foregoing instrument of writing, purporting to be the last will and testament of John McKinley, dec'd, late of this county, was produced in
27 court and proved by the oaths of N. Wolfe and Thomas P Smith, two of the subscribing witnesses thereto, and therefore the same was established by the court to be the last will and testament of said John McKinley, dec'd, and ordered to be recorded and is recorded in my office as clerk of said court.

J. CURRAN POPE,
Att'y.

A copy. Att.

T. JACK, *Coun. Clk.*

Filed 7th day of May, 1867.

A. ALSTON, *C. & M.*

Cost bond.

ANDREW MCKINLEY, EX., }
vs.
PATRICK SHERRY. }

We, Andrew McKinley and Luther F. Thurston, executors and trustees, &c., et al, and John Coffee, acknowledge ourselves indebted to Patrick Sherry and Dennis Saxton in the sum of two hundred
28 and fifty dollars, to be void if the said Andrew McKinley et al., complainants in a bill which has this day been filed in the chancery court of Memphis against the said Patrick Sherry, shall pay all such costs as may be awarded against them by the court in its decrees and orders in said bill.

This 7th day of May, 1867.

JOHN D. COFFEE. [SEAL.]

Attest.

C. W. HEISKELL.

Filed May 7th, 1867.

A. ALSTON, *C. & M.*

Subpœna to answer.—Issued 7th day of May, 1867.—*A. Alston, C. & M.*

The State of Tennessee to the sheriff of Shelby County:

Summon Patrick Sherry and Dennis Saxton, if to be found in
29 your county, to appear before the chancery court of Memphis, at the court-house in the city of Memphis, on the second Monday in May next, then and there to answer the bill of complaint of Andrew McKinley and others, a copy of which accompanies this writ.

Herein fail not, and have you then and there this writ.

Witness, Augustin Alston, clerk & master of said court, at the office in the city of Memphis this second Monday in Nov., 1867, and 91st year of American Independence.

A. ALSTON, *C. & M.*

John W. Taylor is hereby appointed special deputy sheriff of Shelby County to execute and return the within process.

Given under my hand and seal this 8th day of May, 1867.

P. M. WINTERS,
Sheriff Shelby County.

Came to hand 8th day of May, 1867. Executed the same day by
30 delivering copy of bill and reading the within to Dennis Saxton and Patrick Sherry.

P. M. WINTERS, *Sheriff*,
By J. W. TAYLOR, *S. D. Sheriff*.

Answer of Patrick Sherry.

In the chancery court.

ANDREW MCKINLEY AND OTHERS
vs.
PATRICK SHERRY AND OTHERS. } 1890 N. R. D.

The separate answer of the defendant, Sherry.

For answer this respondent says that on the 25th day of June, 1864, at a sale of lands for unpaid taxes, under and by virtue of an act of the Congress of the United States of America, entitled "An act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes," and the act amending the same, held pursuant to a proper and legal notice at Memphis, in the county
31 of Shelby, and State of Tennessee, he being the highest and last bidder therefor at public auction, became the purchaser of the following tract or parcel of land, to wit: Lot 32, part of Manly tract, six and fifty-eight one hundredths acres (6.58), assessed to heirs of McKinley in 1860, fifth civil district of Shelby County, for the price and consideration of two hundred and fifty-five dollars, which he then and there paid to the commissioners making the said sale, and the said commissioners then and there granted him a certificate of his said purchase, and the same is held subject to the order of the court, and a true copy is herewith filed as a part hereof, and marked "Exhibit A."

And on the 22d day of June, 1864, at a sale of lands similar to that already stated, held at Memphis aforesaid, pursuant to a like proper legal notice, this respondent, being the highest and last bidder at public auction, became the purchaser of the following tract or parcel of
32 land, to wit: Part of weekly grant, lot thirty-one (31), six and eighty-four hundredths acres (6.84), assessed to R. M. Patton in 1860, fifth civil district of Shelby County, for the price and consideration of two hundred and twenty-five dollars, which he then and there paid to the commissioners making the said sale; and the said commissioners then and there granted him a certificate of his said purchase, and the same is held subject to the order of the court, and a true copy is herewith filed as a part hereof, marked "Exhibit B."

And after his said purchase, this respondent entered into and upon each of the said tracts of land, which are the same that are described in the bill, and in person, or by his agents and tenants, this respondent has ever since had and still has and holds possession of the same, claiming under and by virtue of his said purchases.

And this respondent avers and shows that the said tracts of land were subject to the said taxes, and to the sales aforesaid for the pay-
33 ment thereof; nor had the said taxes been paid previous to the said sales, nor have the said tracts or either of them been redeemed since the said sales; and this respondent here sets up the certificate aforesaid granted him by the said commissioners, as conclusive evidence of the regularity and validity of the said sales, and he pleads the same

as a full, complete, and absolute bar to the objections urged against the said sales in the bill, and to any objections that may hereafter be raised.

Further answering, this respondent says he is informed and he avers that the said tracts of land were properly assessed for taxation previous to the said sales, and the allegations in the bill to the contrary he wholly denies.

This respondent submits the constitutionality of the acts of Congress under which the said sales were made to the decision of the court; he denies that the assessment made by the commissioners was excessive or unauthorized, but avers that the same was proper, and in ac-
34 cordance with the provisions of the said acts; this respondent submits that the act of Congress as to the time when the commissioners should enter upon their duties was directory merely, and gave them the right to determine for themselves; but even if it was not so, the whole of the fifth civil district of Shelby County, and, indeed, the whole of Shelby County, at the time the said commissioners did enter upon their duties, was "within the military authority of the United States"; this respondent avers that the said sales were duly and legally advertised in the "Bulletin," a newspaper published in the county of Shelby, for the time prescribed by law, and he denies the allegations in the bill to the contrary, and he avers that the property hereinbefore described was sufficiently described in the said advertisements; this respondent has no personal knowledge of the manner in which the said advertisements were printed in the said newspaper, nor of the manner in which the portions of the said newspaper containing the said
35 advertisements were circulated, but he denies the allegations of the bill as to these facts, and calls for strict and full proof.

Further answering, this respondent says, it is true he sold to his co-defendant, Dennis Saxton, for the agreed price of two thousand dollars, one of the lots of ground before mentioned, and that the said Saxton gave him his three promissory notes for the said price, which said notes he has negotiated, and they are yet outstanding and unpaid; but by agreement between the said Saxton and this respondent, the said sale and purchase have been cancelled and set aside, and the said Saxton became and is the tenant of this respondent, and as such is in the possession of the said lot of ground, which is the property of this respondent only.

This respondent knows nothing of the title of the plaintiff, Patton, and John McKinley, deceased, to the property described in the bill, as the same is stated therein, and he therefore denies the same, and calls for proof; and this respondent knows nothing of the death of the
36 said John McKinley, nor of his having left a will, nor of the provisions of the will, nor whether the plaintiffs, or any of them, are his executors, trustees, children, heirs-at-law, or devisees, and he therefore denies the allegations of the bill in these particulars, and calls for proof.

This respondent admits the rebellion and the interdiction of commerce and communication between the rebels and the loyal people of the United States, and between the portions of the territory of the United States occupied by them respectively; and that Memphis and Shelby County, at and before the said sales to this respondent, were in the actual occupation of the forces and under the military authority of the United States; and that the plaintiff Patton lived in the country held and occupied by the rebels, and was actively engaged in aiding and promoting the rebellion; and also that all the other plaintiffs were

residents of the States of New York, Kentucky, and Missouri, as stated in the bill.

And all the other allegations in the bill, not hereinbefore answered, this respondent here denies.

37 And this respondent demurs to the bill for want of equity apparent on the face of it, and because the plaintiffs have an adequate remedy at law, and because the several objections urged against the validity of the sales to this respondent cannot be entertained nor inquired into by this court.

And having fully answered, this respondent prays to be hence dismissed, &c.

AYRES & RANDOLPH,
Sol's for res'p't.

I, Patrick Sherry, respondent in the foregoing answer, do swear that the matters therein stated as of my own knowledge are true, and that those stated from information I believe to be true.

PATRICK SHERRY.

Subscribed and sworn to before me this 17th day of June, 1867.

BENJ. COLEMAN,
Dep. Clerk.

38 Filed 17th day of June, 1867.

A. ALSTON,
Clerk & Master.

EXHIBIT A.

UNITED STATES OF AMERICA.

Tax-sale certificate No. 1105.

This is to certify that a sale of lands for unpaid taxes under and by virtue of an act entitled "An act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes," and the act amending the same, held, pursuant to notice, at Memphis, in the county of Shelby in the State of Tennessee, on the 25th day of June, A. D. 1864, the tract or parcel of land hereinafter described, situated in the county of Shelby, and State aforesaid, and described as follows, to wit: Lot thirty-two (32), part of Manly tract, six and

39 fifty-eight one-hundredths acres ($6\frac{58}{100}$), assessed to heirs of McKinley in 1860, fifth civil district (country), was sold and struck off to Patrick Sherry for the sum of two hundred and fifty-five dollars and cents, he being the highest bidder, and that being the highest sum bidden for the same, the receipt of which said sum in full is hereby acknowledged and confessed.

Given under our hands at Memphis, this twenty-fifth day of June, A. D. 1864.

JOHN B. RODGERS,
E. P. FERRY,
DELAIN T. SMITH,
Commissioners.

Filed June 17th, 1867.

A. ALSTON, *C. & M.*

EXHIBIT B.

UNITED STATES OF AMERICA:

Tax-sale certificate No. 835.

This is to certify that at a sale of lands for unpaid taxes under
40 and by virtue of an act entitled "An act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes," and the act amending the same, held pursuant to notice, at Memphis, in the county of Shelby, in the State of Tennessee, on the twenty-second day of June, A. D. 1864, the tract or parcel of land hereinafter described, situate in the county of Shelby, and State aforesaid, and described as follows, to wit: Part Weakley grant, lot thirty-one (31), six and eighty-four one-hundredths ($6\frac{84}{100}$) acres, assessed to R. M. Patton in 1860, fifth civil district (country), was sold and struck off to Patrick Sherry for the sum of two hundred and twenty-five dollars and cents, he being the highest bidder, and that being the highest sum bidden for the same, the receipt of which said sum in full is hereby acknowledged and confessed.

41 Given under our hands, at Memphis, this twenty-second day of June, A. D. 1864.

JOHN B. RODGERS,
E. P. FERRY,
DELAIN F. SMITH,
Commissioners.

Filed June 17th, 1867.

A. ALSTON, *C. & M.*

Answer and disclaimer of Dennis Sexton.—Filed Sept. 11, 1867.

Not in files; lost and can't be found.

E. A. COLE, *C. & M.*

Subpœna to testify.—Issued 28th day of September, 1868.—*A. Alston, C. & M.*

The State of Tennessee to the sheriff of Shelby County:

42 Summon William H. Morgan, esq., and M. T. Williamson, esq., if to be found in your county, to appear before the clerk and master of the chancery court of Memphis, at the court house in the city of Memphis, on Tuesday, September 29th, 1868, then and there to testify in a cause of Andrew McKinley and others, complainants, vs. Patrick Sherry and others, defendants, on behalf of complainants.

Herein fail not, and have you then and there this writ.

Witness Augustin Alston, clerk and master of the chancery court, at the office in the city of Memphis, this 28th day of September, 1868, and 92d year of American Independence.

A. ALSTON, *Clerk & Master.*
By E. B. McHENRY, *D. C. & M.*

Came to hand 28th day of September, 1868. Executed same day
43 by making known the contents of the within to W'm H. Morgan and M. F. Williamson, esq.

A. P. CURRY, *Sheriff.*
A. W. TAYLOR, *S. D. S.*

ANDREW MCKINLEY AND OTHERS
vs.
PATRICK SHERRY AND OTHERS. } 1890. N. R. D.

Agreement of counsel.

It is agreed by counsel that the deposition of Moses Parish, taken on the 10th day of April, 1867, in the case of R. C. Brinkley, George W. Cheek, and Jessie W. Page, jr., vs. W. S. Smith and F. Hursh, No. 51 in the Federal court at Memphis, No. 51 equity docket, may be read in evidence in the above cause, together with the Memphis Morning Bulletin supplement, filed with said deposition as Exhibit A, to be read in behalf of complainants, subject to objections to relevancy and competency.

Aug. 14th, 1868. HEISKELL, SCOTT & HEISKELL,
Sol's for Compl'ts.
44 W. M. RANDOLPH, *for Def'ts.*

Filed March 1st, 1869.

A. ALSTON, *C. & M.*

Deposition of John D. Coffee.

ANDREW MCKINLEY AND OTHERS
vs.
PATRICK SHERRY AND OTHERS. } 1890. N. R. D.

In chancery at Memphis.

Deposition of John D. Coffee, a witness of lawful age, taken by consent of parties on the 10th day of October, 1868, to be read in evidence on behalf of complainants, all exceptions to competency because of any liability of said Coffee as surety on the cost-bond in this cause being waived and exceptions only to relevancy being reserved.

Deponent, being duly sworn, says:

45 Question 1st. Are you acquainted with the parties complainants, Andrew McKinley, Luther F. Thurston, Ashley McKinley, Elizabeth A. McKinley, Anna C. McKinley, Mary C. McKinley, Crittenden McKinley, Andrew McKinley, jr., and Pope McKinley, Mary Churchill, Mary Moss Churchill, Julia January, and Robert M. Patton?

Answer. I am intimately acquainted with R. M. Patton, and know Andrew L. McKinley and Mary Churchill to be the children of Judge McKinley. The other parties mentioned are the children either of Andrew L. McKinley or Mrs. Mary Churchill.

Question 2d. What was the relationship of these parties to the John McKinley mentioned in the bill? Did you know said John McKinley? Is he living or dead? When and where did he die, if dead? Are these parties complainants the same who are mentioned in the will of John McKinley, which is exhibited with the bill? State if you have examined the will.

46 Answer. They are children or grandchildren to the John McKinley mentioned in the bill. I knew John McKinley in my early boyhood. He was a very intimate friend in my grandfather's family. He is dead; died in Louisville, Kentucky, where he removed from North Alabama. He died many years since—fully ten. I do not know exactly the date, or even the year. These are the same parties who are mentioned in the will of Judge John McKinley, and are now the parties complainants in this suit. I have carefully read and examined the will of Judge McKinley. In fact I obtained, through Mr. January, of St.

Louis, the certified copy of his will which is made an exhibit in this suit.

Question 3d. Do you know the Derick A. January mentioned in the bill, and is he or not the husband of complainant, Julia January?

Answer. I do not know D. A. January personally. I know him
47 from reputation as a very wealthy and reliable citizen of St. Louis. He is president of the St. Louis Mutual Life Insurance Co., which has an agency in Memphis. I know that he married Julia Churchill. I have corresponded with him, and have, by instructions from him and from Andrew L. McKinley (with whom I have recently exchanged letters), drawn on him (D. A. January) for the money necessary to pay the McKinley taxes here and other dues from the McKinley estate. D. A. January lives in St. Louis, Andrew L. McKinley in New York City, and Robert M. Patton in Florence, Alabama. He was late the governor of that State. I do not know the present residence of Mrs. Churchill, or whether she is living. Her daughters, Mary Moss Churchill and Mrs. January, are living.

JOHN D. COFFEE.

MEMPHIS, TENN., *Oct. 10th*, 1868.

Filed March 1st, 1869.

A. ALSTON, *C. & M.*

48 *Agreement as to notice.*

ANDREW MCKINLEY
vs.
PATRICK SHERRY & DENNIS SAXTON

and

JOSEPH GRAHAM
vs.
PATRICK SHERRY.

It is agreed that the deposition of W'm H. Morgan and M. F. Williamson shall be taken in the above causes at the clerk & master's office on Tuesday, September 29th, 1868, at 2½ o'clock p. m., to be be read in evidence on behalf of complainants, subject to exceptions to relevancy and competency.

W. M. RANDOLPH,
Sol. for def'ts.

Depos'tions of W'm H. Morgan and M. T. Williamson.

49 ANDREW MCKINLEY & OTHERS *vs.* PATRICK SHERRY & DENNIS SAXTON } 1890. N. R. D.

and

JOSEPH GRAHAM *vs.* PATRICK SHERRY & OTHERS. } 742. N. R. D.

Depositions of W. H. Morgan, esq., and M. T. Williamson, esq., taken by consent, to be read in both of the above causes pending in the chancery court of Memphis, subject only to exception for competency and relevancy: taken on behalf of compl'ts.

W. H. MORGAN, esq., being sworn, deposes:

Question 1st. State fully all you may know about the establishment of the military lines of the Federal forces around Memphis, Tennessee,

during the year 1864. State how far out from Memphis the picket-lines were established at any time during the year 1864. State what actual military occupation of Shelby County, outside of the said picket-lines, existed at any time during the year 1864. State, if during your
50 connexion with the command at Memphis in 1864, there was at any time any actual military occupation of that portion of Shelby County (by said Federal forces) which lies between Raleigh and the northeast and east lines of the county. If so, what was it? How long was it continued? What forces held it; and every fact connected therewith. State whether or not the district assigned to the commanding general at Memphis was not the district of West Tennessee. What was the extent of this district? Was there an actual possession and occupancy of it by the Federal forces, or was it merely a designated area not in the actual military occupation of the Federal forces? Was or was not the country outside of the actual picket-lines around Memphis under the Federal military authority in the same way and to the same extent, and no further, as the remainder of the district of West Tenn. was under the Federal military authority? Was there in fact ever anything more than an occasional temporary occupation of Shelby
51 County outside of picket-lines around Memphis, and that only when a cavalry scout or other detached force was sent out on some temporary expedition, and a possession only where their actual temporary presence might have been? State any other fact that may occur to you which will throw light upon the question of the occupancy of Shelby County throughout its borders by the Federal forces in the year 1864.

M. T. Williamson, esq., will answer the same questions.

W. H. MORGAN being duly sworn according to law, deposes and says: I was appointed ass't adjutant general United States Vol's for the district of West Tennessee, April, 1864; at that time we had troops stationed along the line of the Memphis and Charleston Railroad as far as La Grange, and sometimes as far as Grand Junction. Our picket lines were, on the east, on a line that struck Buntin's Station; on the north, Wolf River; on the south, Cane Creek, with cavalry videttes as
52 far as Wonconnah Creek. There was also a camp at White's Station. There were detachments of troops sent out sometimes, as often as three times a week, in that portion of Shelby County between Raleigh and the northeast and east line of the county. This was continued all the time with slight intervals. The general commanding the district of West Tennessee had his headquarters at Memphis. There was also under him at Memphis another general, who commanded the district of Memphis. The district of West Tennessee comprised all that portion of territory known as West Tennessee. The district of West Tennessee was a designated area.

As before stated, detachments of troops were sent out at various periods, generally with not more than three days' rations. The sending out of these detachments would properly be called a reconnoisance. I should not consider that it would have been safe in 1864 for the commissioners to have gone out ten miles from Memphis, except on the
53 Memphis and Charleston Railroad, without a military escort. I give the answers to the best of my recollection, and do not remember of the occupation—that is, permanently—in 1864, by the Federal forces, except as I have named, of any portion of Shelby County, outside of the picket lines named.

W. H. MORGAN.

M. T. WILLIAMSON, being duly sworn, deposeth and says:

That he was lieut. and A. D. C. to Brig. Gen'l R. P. Buckland, in the United States service. That he was in Memphis from and after Nov. 12th, 1863. About that time Gen. Buckland was assigned to the command of the district of Memphis, which embraced the city of Memphis and that portion of the country inside the infantry picket lines. The infantry pickets were about two and a half or three miles from Court Square. He does not know of his knowledge where the cavalry pickets were stationed, but has carefully read the statement of W. H. Morgan,
and the statements made by him agree with what he always
54 understood and believed to be the outside or cavalry picket line.
And in regard to the other matters contained in said Morgan's statement, he fully corroborates them, either from his own knowledge or from what he understood from those in command at the time, as being the condition of things from and after November 12th, 1863.

M. T. WILLIAMSON.

The defendants save all legal objections to the foregoing depositions of W. H. Morgan and M. T. Williamson for incompetency and irrelevancy, and cross-examine as follows:

Question 1st. At the time or times you have spoken of in your answers to the interrogatory in chief, was there any actual or continued occupation of any part or portion of Shelby County by the rebels or by any persons in armed hostility to the Government of the United States;
if so, what was the extent, the character or the duration of such oc-
55 cupation? Was not Shelby County at and during the said date,
with occasional temporary interruptions, continuously within the actual control and power of the Federal military forces, and had not such forces during all the said time or times, for all the practical purposes of warfare, possession and occupation of Shelby County? What was the defined limit, or what were the defined limits, of the actual military occupation of the Federal military forces, in and around Memphis during the year 1864, or were any prescribed, and if prescribed, have you a copy or copies of the order or orders prescribing them, and will you make copy or copies part of your depositions? In whose occupation or possession was West Tennessee during the years 1863–1864 and 1865; that is, in whose occupation or possession in a military point of view? In that of the forces of the United States, or in that of the forces of the rebels, in arms against the United States? During the
said years 1863–1864 and 1865 were there any considerable bodies
56 of armed rebels within the district of West Tennessee, and was it
not in the power of the Federal forces in Memphis to have passed through, or have occupied, almost any part of West Tennessee during the said years, at pleasure, and without opposition?

When the above interrogatories are fully answered by the above-named witnesses I will waive their oaths and agree that their depositions may be read as if sworn to.

W. M. RANDOLPH,
Sol. for Def'ts.

In answer to the cross interrogatory by defendant's counsel, M. T. Williamson deposeth and saith:

That at the time referred to, say from November, 1863, and during the year 1864 and the spring of 1865, there was no actual or continuous occupation of any portion of Shelby County by the rebels, or persons in armed hostility to the government, to my knowledge. During the greater

portion of the time there were continual and almost constant ru-
57 mors of the presence of guerrilla bands in the suburbs of Memphis. I do not believe, and did not at the time, that they were the regular rebel forces, or any portion of their command. Shelby County was, during this time, with occasional interruptions, continuously in the actual control of the Federal military authorities. In a military sense, all West Tennessee was, during the time named, in the possession and under the control of the Federal troops and authorities. By saying that Shelby County was in the actual control of the Federal military authorities, mean that it was within the limits of the command of the commanding general of West Tennessee, and that in a military sense it was under their control and in their occupation. I do not mean that the Federal troops were actually in possession of the same by commands stationed at different points in the county. I know of no military posts in the county, outside of the picket-line around Memphis, north of the Memphis and Charleston Railroad.

58 M. T. WILLIAMSON.

I did not consider that the control of the Federal general at Memphis stopped at the cavalry pickets, but extended all over Shelby County. I have not any copies of the orders spoken of; I do not believe that any portion of Shelby County was occupied as a post, station, or district by Confederate forces after the evacuation of Memphis. Small bands were continually on the picket-lines, and gave a good deal of trouble. They were, however, chiefly bushwhackers or guerrillas.

W. H. MORGAN.

Filed March 1st, 1869.

A. ALSTON, *C. & M.*

Deposition of M'r's Mary N. Young and M'r's Mary E. Pope.

ANDREW MCKINLEY AND OTHERS
vs.
PATRICK SHERRY & DENNIS SAXTON. } 1890. N. R. D.

59 Chancery court of Memphis.

Deposition of M'r's Mary N. Young and M'r's Mary E. Pope, taken by consent, upon interrogatories to be read in evidence in the above cause on behalf of complainants, exceptions to competency and relevancy only being reserved.

Interrogatories for M'r's Mary N. Young & M'r's M. E. Pope.

Inter. 1st. Do you know what was the relationship, if any, existing between the complainants, Andrew L. McKinley, Ashley McKinley, Elizabeth A. McKinley, Anna C. McKinley, Mary C. McKinley, Crittenden McKinley, Andrew McKinley, j'r, and Pope McKinley, Mary Churchill, Mary Moss Churchill, and Julia January and John McKinley, now deceased? If so, state what that relationship was; when John McKinley died; the name of the husband of Julia January, and if he is still living; and how you know the facts to which you depose in relation to all the above matters.

60 Inter. 2d. Where did John McKinley reside at the time of his death?

Oath waived and cross-examination waived.

W. M. RANDOLPH,
Sol'r for Def'ts.

Answers of M'r's Mary N. Young and of M'r's Mary E. Pope to the above interrogatories in the case of Andrew McKinley and others vs. Patrick Sherry and Dennis Saxton.

Inter. 1st. Answer. We do. Andrew L. McKinley and Mary Churchill were the children of Judge John McKinley. We know also that they both married and had children, but do not know the names of their children, as for many years past we have lived in entirely different sections of the country; we living in Memphis, and the McKinley and Churchil people living in Louisville, S't Louis, and New York City.

We do not remember the exact date of the death of John
61 McKinley, but know that he has been dead a good many years; died some time prior to the late war between the North and South. We know nothing of the name of the husband of Julia January, or as to whether he is living. We knew the McKinley family well in our childhood; we lived in the same village [with them]* for years, viz, Huntsville, Alabama; attended the same schools they did, and had that full knowledge of the family which would result from intimate association between families for years. One of the deponents (M'r's Young) afterwards knew the McKinley family at Florence, Alabama, where they moved from Huntsville, and from which place they all went to Louisville, Kentucky; in which latter place and State John McKinley was for years a supreme judge. He was always regarded as a high-minded, honorable, good citizen.

Int. 2d. Answer. So far as we know, John McKinley died in Louisville, Kentucky, where for so many years he resided; either in or near Louisville.

62 This statement given at Memphis, Tenn., this 19th day of Sept., 1868.

MARY N. YOUNG.
MARY E. POPE.

I have read the will of John McKinley, made an exhibit to the bill; am acquainted with the McKinley family, and know the parties named in the will to be the same parties concerning whom the above interrogatories are propounded, and who are complainants in the bill. D. A. January married the daughter of Mary Churchill, who (January's wife) was the grand-daughter of John McKinley. Mary Moss Churchill is the sister of M'r's January. Andrew L. McKinley is the son of John McKinley. And Ashley, Elizabeth, Anna C., Mary, Crittenden, Andrew, j'r, and Pope, are the children of Andrew L. McKinley.

Memphis, Sept. 24, 1868. JOHN D. COFFEE,

The incompetency & oath of Coffee are waived.

63 W. M. RANDOLPH,
Sol. for Def'ts.

Filed March 1st, 1869.

A. ALSTON, *C. & M.*

ABSTRACT OF TITLE.

Examination of title to lots 31 and 32 of Weakley tract, being part of a tract of 1,456 acres lying north of and adjacent to the city of Memphis, Tenn.

Circuit court of Shelby County, Tenn., to Robert Weakley.

Decree of partition rendered Jan'y 4th, 1838, and recorded Jan'y 30th, 1838, in book F, page 436.

* In pencil.—PRINTER.

In case of petition of Robert Weakley and Alanson Trigg, for himself and others, John Ralston, John D. Graham, and John Anderson, commissioners called upon by Robert Weakley and the heirs of Lucy Trigg to divide a certain tract of land lying on Wolf River, in range 8,
64 section 2, of the 11th surveying district, containing 1,456 acres, report an examination and partition, and that, after balloting, we have assigned to Robert Weakley seven hundred and eight acres, being the west end of said 1,456 acres, and bounded as follows, to wit: Beginning at a white oak, marked "×," the southeast corner of 1,456 acres, on the north boundary-line of John Rice's 5,000-grant; thence east 5° south with said line sixty-five chains and fifty-six links to * * * the heirs of Mrs. Trigg's southwest corner; thence north with line one hundred and eleven chains to * * * * north boundary-line of 1,456 acres; thence west with said line sixty-five chains and fifty-six links to * * * the northwest corner of said 1,456 acres; thence south with the west boundary line one hundred and five chains to the beginning * * * * * *.

Decree confirms report of commissioners, divides title to said 708 acres out of heirs of Lucy Trigg, and vests in said Rob't Weakley.

65 *Henry A. Bragg to John McKinley.—Consid'n*, $5.45.

Title bond, March 6th, 1850. Filed March 15th, 1850, in book 4, page 526.

To make warranty deed within six months from date hereof of und. ½ of lots 31 and 32 Robert Weakley tract. Orders and appoints that the chancery court of Franklin, Tenn., vest title to said property in said McKinley.

Duly acknowledged.

3.

Jackson B. White, C. & M. Nashville chancery court, to Henry A. Bragg.—Consid'n, $585.50.

Deed dated Aug. 12th, 1850, and recorded September 23d, 1850, in book 6, page 81.

Conveys lots 31 & 32 in the plan of lots adjacent to Memphis, belonging to the heirs of Robert Weakley. Lot 31, containing 6.84 acres, and lot 32, containing 6.58 acres, sold under decree of chancery court at Franklin, for district composed of counties of Davidson and Wil-
66 liamson, at October term, 1845, in case of Narcissa Hickman, &c., vs. Letitia A. Brahan and als., by R. S. Weakley, jr., com'r. Said sale confirmed at April term, 1846, and clerk and master ordered to execute deed to purchasers upon payment of purchase money.

Duly acknowledged.

4.

Henry A. Bragg to Robert M. Patton.—Consid'n, $6.50.

Warranty deed dated Feb'y 14th, 1851, and recorded 18th, 1851, in book 7, page 4.

Conveys undivided ½ of lots 31 and 32 of tract belonging to heirs of Rob't Weakley, "the other undivided half having been sold and conveyed by me to Co'l John McKinley, of Louisville, Kentucky."

Conveys covenants of general warranty.

Duly acknowledged.

We have examined the records of the register's office of Shelby County, Tenn., and find no conveyances of the premises men-
67 tioned in the caption hereto by the grantors or grantees herein named, except as herein shown.

Memphis, Tenn., March 1st, 1869.

SEARS & SMITH,
By McCOMBES.

Filed March 2d, 1869.

A. ALSTON, *C. & M.*

Henry T. Bragg, Frank S. Bragg, Edward V. Bragg, Isabella G. Bragg, Fannie C. Bragg, Mary E. Adams, formerly Mary E. Bragg, and her husband, Thomas P. Adams.

The above are the children and heirs of Henry A. Bragg.

Notice to take depositions.

ANDREW McKINLEY & OTHERS
vs.
PATRICK SHERRY AND OTHERS. } No. 1890. N. R. D.

68 To Patrick Sherry and Dennis Saxton:

Take notice that, on Friday, August 13th, 1869, at the office of the clerk and master of the chancery court of Memphis, in the Greenlaw Block, in the city of Memphis, Tennessee, we will take the depositions of D'r B. R. Thomas, Dennis Saxton, and Charles D. McLain, to be read in evidence in the above-entitled cause on behalf of complainants.

Aug. 2, 1869.

ANDREW McKINLEY ET AL., *Compl'ts,*
By HEISKELL, SCOTT & HEISKELL, *Sol's.*

Executed by delivering to Patrick Sherry a copy of the within notice. Aug 7th, 1869.

A. P. CURRY, *Sheriff.*
S. S. GARRETT, *D. S.*

Subpœna to testify.

Issued 6th day of August, 1869.

A. ALSTON, *Clerk & Master.*

69 The State of Tennessee to the sheriff of Shelby County:

Summon B. R. Thomas, Dennis Saxton, Charles D. McLain, if to be found in your county, to appear before the clerk and master of the chancery court of Memphis, at the court-house in the city of Memphis, on Friday, August 31st, 1869, at 9 a. m., then and there to testify in a cause of Andrew McKinley et al., complainants, vs. Patrick Sherry et al., defendants, on behalf of complainants. Herein fail not, and have you then and there this writ.

Witness Auguston Alston, clerk and master of the chancery court, at the office in the city of Memphis, this 6th day of August, 1869, and 94th year of American Independence.

A. ALSTON, *C. & M.*
By R. J. BLACK, *D. C. & M.*

70 R. M. Mason is hereby appointed special deputy sheriff of Shelby Co. to execute and return the within process.

Given under my hand and seal this 6th day of August, 1869.

[SEAL.] A. P. CURRY,
Sheriff Shelby County.

Came to hand 6th day of August, 1869; executed August 7th, 1869, by reading the within to B. R. Thomas and Charles D. McLean.

A. P. CURRY, *Sheriff*,
By A. W. TAYLOR, *Sp. D. Sh'ff.*

And further executed on Dennis Saxton, by reading the within to him on August 21st, 1869.

A. P. CURRY, *Sheriff*,
By R. M. MASON, *Sp. D. Sh'ff.*

Subpœna to testify.

Issued 20th day of August, 1869.

A. ALSTON, *C. & M.*

71 The State of Tennessee to the sheriff of Shelby County:

Summon D'r B. R. Thomas and Dennis Saxton, if to be found in your county, to appear before the clerk and master of the chancery court of Memphis, at the court-house in the city of Memphis, on Friday, August 27th, 1869, at 10 a. m., then and there to testify in a cause of Andrew McKinley et al., complainants, vs. Patrick Sherry et al., defendants, in behalf of complainants.

Herein fail not, and have you then and there this writ.

Witness Auguston Alston, clerk and master of the chancery court, at the office in the city of Memphis, this 20th day of August, 1869, and 94' year of American Independance.

A. ALSTON, *C. & M.*,
By R. J. BLACK, *D. C. & M.*

72 S. D. Thompson is hereby appointed special deputy sheriff of Shelby County to execute and return the within process.

Given under my hand and seal this 21st day of August, 1869.

[SEAL.] A. P. CURRY,
Sheriff of Shelby Co.

Came to hand 21st day of August, 1869.

Executed same date by reading contents of the within to B. R. Thomas.

A. P. CURRY, *Sheriff*,
By S. D. THOMPSON, *Sp. D. S.*

"McLemore & Weakley grant," No. 17997. Recorded Jan'y 13th, 1813.

The State of Tennessee to all whom these present shall come, greeting:

Know ye, that in consideration of warrant No. 2578, dated the 22d day of December, 1804, issued by W'm White, secretary of the State
73 of North Carolina, to Guilford Dudley, for 1,456 acres on amount of an entry made by him in John Armstrong's office, dated the 25th day of May, 1784, there is granted by the said State of Tennessee, unto Robert Weakley and John C. McLemore, assignees of the said Guilford

Dudley, a certain tract or parcel of land, containing fourteen hundred and fifty-six acres by survey, bearing date the first day of August, 1822, lying in Shelby County, in the 11th district, in range 8, section 2, on both sides of Wolf River, and bounded as follows: Beginning on the N. B. line of a 5,000 acre tract granted to John Rice, at a white oak marked "×," which stands twenty-one chains east of said Rice's N. W. corner, thence running south 85° east, with Rice's N. B. at 16 chains, crossing Wolf River, bearing south, in all one hundred and thirty-one chains eighteen links, to a small white oak, marked "□," ash and poplar pointers; thence north at 98 chains crossing Wolfe River, bearing westwardly, in all one hundred and seventeen chains, to a stake; thence west one
74 hundred and thirty-one chains eighteen links to a red bud marked "×"; thence south one hundred and five chains to the beginning; with the hereditaments and appurtenances, to have and to hold the said tract or parcel of land, with its appurtenances, to the said Robert Weakley and John C. McLemore and their heirs forever.

In witness whereof W'm Carrol, governor of the State of Tennessee, hath hereunto set his hand and caused the great seal of the State to be affixed, at Murfreesborough, on the 11th day of September, in the year of our Lord 1822, and of the Independence of the United States the 47th.

W'M CARROL.

By the governor.
DANIEL GRAHAM,
Secretary of State.

I, Alex. Kocsis, register of the land office for the district of Middle Tennessee, do hereby certify that the foregoing is a true copy of
75 grant No. 17997 of the State of Tennessee to R. Weakley and John C. McLemore as the same stands recorded in my office.

Given under my hand, office at Nashville, the 19 Aug., 1869.*

ALEX. KOCSIS, *Register.*
By A. GABBINGER, *Deputy.*

Filed August 27th, 1869.

A. ALSTON, *C. & M.*

Notice.

ANDREW MCKINLEY AND OTHERS
vs.
PATRICK SHERRY & DENNIS SAXTON.

To Patrick Sherry and Dennis Saxton:

Please take notice that at the hearing of the above cause we will offer in evidence the original and injunction bill, together with affidavit thereto, in the cause of Dennis Saxton vs. Patrick Sherry and John B. Rogers, No. 2999, N. R. D., now pending in the chancery court of
76 Memphis, Tenn., to be read in evidence in our behalf.

Aug. 27th, 1869.

ANDREW MCKINLEY ET AL.,
By HEISKELL, SCOTT & HEISKELL, *Sol's.*

Service of notice accepted, reserving questions of competency, &c.
August 27th, 1869.

W. M. RANDOLPH,
For Def'ts.

Filed August 27th, 1869.

A. ALSTON, *C. & M.*

* In pencil.—PRINTER.

Notice.

ANDREW MCKINLEY & OTHERS } 1890. N. R. D. In chancery court,
vs. at Memphis.
PATRICK SHERRY & OTHERS. }

To Patrick Sherry:

Take notice that on Friday, August 27th, 1869, at the office of the clerk and master of the chancery court in Memphis, Tennessee, we will take the depositions of Dr. B. R. Thomas and Dennis Saxton, the
77 taking of said depositions to be commenced at 10 a. m. of that day, to be read in evidence in the above cause in our behalf.

August 19th, 1869.

ANDREW MCKINLEY ET AL.,
Complainants.
By HEISKELL, SCOTT & HEISKELL,
Sol's.

S. D. Thompson is hereby appointed special deputy sheriff of Shelby Co. to execute and return the within process.

Given under my hand and seal this 21st day of August, 1869.

[SEAL.] A. P. CURRY,
Sheriff Shelby County.

Came to hand August 21st, 1869, and executed same day by delivering a copy of the within notice to Patrick Sherry.

A. P. CURRY, *Sheriff*,
By S. D. THOMPSON, *Sp. D. Sh'ff.*

ANDREW MCKINLEY & OTHERS } 1890. N. R. D.
vs.
PATRICK SHERRY AND OTHERS. }

78 Deposition of B. R. Thomas, taken at the office of the clerk and master of the chancery court of Memphis, in the Greenlaw block, on Friday, 27th day of August, 1869, in obedience to the notice herewith attached, taken in the presence of deputy clerk and master, and of W. L. Scott, esq., one of the solicitors of complainants.

Said witness, aged sixty-five years, being duly sworn, deposeth as follows:

Question 1st, by compl'ts' counsel. Please state how long you have resided in Shelby County, upon what tract of land you now reside, and how long you have resided thereupon. Describe the name of the grantees of said land.

Answer. I have resided in Shelby County 24 years; I live upon what is termed the McLemore and Weakley grant, and have lived there for
79 24 years. It was granted to McLemore and Weakley, at least it was always known as the McLemore and Weakley grant, and divided as such between McLemore and Weakley.

Question 2d. Where does this McLemore and Weakley tract lie? What direction from Memphis? In what civil district? How far from Memphis? Examine the McLemore and Weakley grant I now show you, and state if the boundaries are correct. On which division do you live—the McLemore part or the Weakley part.

Answer. About two miles north of Memphis to nearest part. In the

15th civil district, formerly the 5th. About two miles from court square I have examined the grant, and believe it to be correct. I live on the McLemore division.

Question 3d. State who else lives on the McLemore division except yourself; and have lived there at and since 1860. Answer the same question as to the occupation of the Weakley part.

80 Answer. Dr. Jones, previously occupied by Judge Swayne, Mayor Morehead, W'm T. Morehead, Walter Morehead, and a man by the name of Monneghan, live on the McLemore division. On the Weakly part, James Rollins and sisters, Dr. Ramsey, Squire Glisson, Morris Doyle, and Chrisman; there are many others whose names I do not know.

Question 4th. Do you know the two lots laid down on Rucker's map of Memphis as lots 31 and 32, lot 31 having $6\frac{84}{100}$ acres, and 32, $6\frac{58}{100}$ acres? If so, what part of the original tract are they upon—the McLemore part or the Weakley part? State also who occupied them; if you are informed who claims them, also state it.

Answer. I have examined the map, and find those two lots are on the Weakley grant. Mr. Saxton occupies lot No. 32; do not know who occupies the other. Mr. Saxton claims the lot he is on under tax sales from Mr. Sherry.

81 Question 5th. Do you mean that Mr. Saxton claims to have purchased it at a tax sale; being sold as Mr. Sherry's land for taxes; or, if not, explain your meaning.

Answer. I mean Mr. Sherry bought it at U. S. tax sale, and sold it to Mr. Saxton; what Mr. Sherry told me himself.

Question 5th. Who occupied lot 32 before Mr. Saxton, or was it unimproved land? If occupied by any persons since you first lived on the original tract, mention the names of the persons who have occupied it. Is the tract laid down as 31 improved or unimproved? What improvements are there upon it, and have there been, since you have lived on the original tract?

Answer. It had been laying out for some time; it was unimproved land. The gov't took possession of it, and cut the timber off of it; after which Mr. Morris Doyle cultivated it one year—year previous to

82 the occupation of it by Mr. Saxton. Mr. Saxton has put on it, since he occupied it, a dwelling and cow-house. No improvements on it that I recollect of previous to Mr. Saxton's occupying it. There was a fence before Mr. Saxton occupied it; no dwelling or house that I recollect of. It was not fenced, or any improvements on it when the government took possession of it. As to the tract 31, I do not know whether there is any improvement on it or not, nor has there been any at any time that I have any recollection of.

Question 6. Did you ever hear of any one of the name of Manly claiming any interest in or ownership of this lot 32? Did you ever hear or know of a grant being issued to any one of the name of Manly for lands embracing lot 32? Did you ever hear it called the Manly tract, or a part of the Manly tract? As a part of what tract has this lot 32 been known since you lived on the original tract?

83 Answer. I never did hear any one of the name of Manly claiming any interest in or ownership of lot 32. Never knew or heard of a grant being issued to any one of the name of Manly for said land. Never heard it called the Manly tract, or a part of the Manly tract. Has always been known as a part of the McLemore and Weakley tract, and as the Weakley division, or part that fell to Weakley in the division.

Question 7th. Did you ever know or hear of any of these lands within the bounds of the Weakley and McLemore grant having been granted to any person of the name of Weakley or of there ever having been any Weakley grant or grants for the same, other than the McLemore and Weakley grant of which you have spoken?

Answer. None that I have ever heard of.

Question 8th. Do lots 32 and 31, of which you have been speaking, lie within the boundaries of the McLemore and Weakley grant,
84 which you have already examined?

Answer. They lie in the boundaries of the McLemore and Weakley grant, and in Shelby County.

Question 9th. What was the given name of Weakley, who was one of the grantees under the McLemore and Weakley grant? State where he died to the best of your recollection.

Answer. Robert Weakley. I do not recollect the time exactly. He died between 1844 and 1850.

Question 9th. Were the heirs of Lucy Trigg parties through whom you deraigned your title to the part of the McLemore division upon which you live? State on what side of Wolf River lots 31 and 32 lie and the range and section, and surveyor's district, if you remember.

Answer. The heirs of Lucy Trigg were the parties through
85 whom I deraigned my title to the land upon which I live. Lots 31 and 32 lie on the east side of Wolf River. Do not know the range, section, or surveyor's district, outside of what is stated in the grant. I only know the grant states it.

Cross-examined defendants:

Question 1st. Who put the fence around lot 32, and what sort of fence is it, and what is its value?

Answer. Mr. Saxton put the fence around it—the one there at present. It is a good plank fence. Could not state its value.

Ques. 2d. What other improvements besides the fence has Mr. Saxton put upon the lot?

Answer. A one-story frame dwelling; do not know how many rooms. Also a cow house. I do not know of anything else. I have not
86 been along there in a good while—some weeks.

Question 3d. Is it practicable to find and locate the two lots by the descriptions—lots 31 and 32—with a statement of the number of acres each contained?

Answer. I should suppose it was.

Re examination:

Question 1st. About what time did Mr. Saxton place the dwelling-house and cow house upon the lot 32, to the best of your recollection? State the year, and the time of the year, as near as you can.

Answer. This year, since last Christmas.

Question 2d. Give some idea of the value of these tracts 31 and 32, at the present time, at the close, and also since the war; and also in the years '62, '63, and '64. State some amount per acre, that in your judgement they were certainly worth.

87 Answer. They are worth, I should think, some $800 per acre at the present time. Not much difference at the close and since the war from the present price; it might have been sold for more in 1864 and 1865, not for the years 1862 and 1863. I am not very well posted as to the price and sales of land. Some adjoining sold for $1,300.00 per acre about three or four years ago. They were worth about the same in 1862 and 1863 as they are now.

Recross-examination:

Question 1st. Do you mean to say that there was a demand for land in 1862 and 1863, or that it could then have been sold for the prices you have stated?

Answer. I do not mean to say there was a demand. It might have been sold for Confederate money at that time for that price or more.

And further deponent saith not.

B. R. THOMAS.

88 Subscribed and sworn to August 27th, 1869.

E. B. McHENRY.

And Dennis Saxton, aged thirty-five years, being duly sworn, says:

Question 1st. Are you one of the defendants in this cause? Did you, on the 5th of September, 1868, file an injunction bill in this court against Patrick Sherry and John B. Rodgers, and is your mark made to the affidavit now shown you appended to the bill, and was it made by you?

Answer. I am one of the defendants in the suit. I bought the lot of Patrick Sherry. I filed the bill mentioned in the question, and it is my mark made by me to the affidavit which is now shown me, and made by me.

Question 2d. The bill was read over to you by the solicitor,
89 W'm Randolph, before you were sworn to it, was it not?

Answer. It was, I expect.

Cross-examination by counsel for d'f'ts:

Question 1st. How many lots have you purchased of Patrick Sherry, one of defendants?

Answer. I purchased one first—the one I now live on—and I then purchased another.

Question 2d. When did you buy the first one, what did you pay for it, and have you a deed for it?

Answer. It was about five years ago that I bought it. I paid fifteen hundred dollars to M'r Sherry for it. He was owing me $500.00, and I gave him $1,000.00 more for it. I have a deed for it.

Question 3d. When did you first learn that the tract of land you first bought of Sherry was involved in this suit?

90 Answer. I never learned it till to-day while D'r Thomas was being examined as a witness. M'r Randolph then told me that it was involved in the suit.

Question 4. When did you buy the second lot from M'r Sherry, and what did you pay or agree to pay for it?

Answer. It was about a year after I bought the first. I agreed to pay $2,000.00, and gave three notes for the amount.

Question 5th. Is this second lot the same, and are the notes given by you the same that are mentioned by you in the bill mentioned in the examination-in-chief?

Answer. The lot is the same and the notes are the same that are described in the bill.

Question 6th. Has the contract between you and Sherry in reference to the second lot been cancelled?

91 Answer. The contract has been agreed to be rescinded between me and Mr. Sherry. He has the lot back and is renting it, but he has never given me up my notes.

Question 7th. Do you now reside on the first lot bought by you of Sherry; and, if so, how long have you resided there?

Answer. I do reside on it, and have resided on it about two months.

Question 8th. What improvements, if any, have you put upon the lot you reside on?

Answer. I have built a nice framed residence with four rooms, and a framed kitchen with one room, and a smoke-house, a chicken-house, a cow-stable, a horse-stable, and corn-crib, a bridge across a branch that is in the lot, plank fence around the lot, a fence around the cow lot and a fence around the hog lot, two cisterns, and a well, and a servant's house.

92 Question 9th. What have these improvements cost you?

Answer. They have cost me, including a well I am going to dig, and a feed-house that I have the lumber to put up, about five thousand four hundred dollars.

Question 10th. Did you know of defect in your title to the lot when you put the improvements on the lot?

Answer. I did not; I knew it had been bought at tax sale.

Question 11th. Did you believe your title to be good?

Answer. I thought it would be good—it had went so far, more than five years, and nobody had ever claimed it.

Re examination:

93 Question 1st. When did you commence the improvements on the lot on which you now live, and where did you live before that time?

Answer. Some time in April, 1869, I began the improvements; I lived on the north side of Wolf River before I moved into the house on the lot.

Question 2d. What business did you follow before you began these improvements, and how long had you been so occupied?

Answer. I was engaged in the dairy business, and had been engaged in that business for six or seven years.

Question 3d. Where were you in the habit of selling your milk during these years?

Answer. In the city of Memphis.

Question 4th. How far from Memphis was the land on which you lived during these years, and who owned it?

94 Answer. A part of the time I lived about five miles from Memphis, on Charley Rose's land. I believe I lived two or three years on this place. It was during the war. At the close of the war I was living on a place I had leased from Oliver Feling; this was a five years' lease. I lived about four years there, and I came to the place where I now live. I paid Feling $200 a year.

Question 5th. Did you understand that Mr. Sherry claimed the land upon which you live under one of the United States tax titles? What was the date of your purchase from him; and is your deed, or paper under which you claim, registered?

Answer. I understood that Mr. Sherry claimed under one of the United States tax titles. It was about five years ago. I bought the lot I now live on from him. The deed was acknowledged and registered.

Question 6th. You say you thought your title would be good—it had went so far, more than five years, and nobody had ever claimed

95 it. What do you mean by "it had went so far"?

Answer. That I had it in my possession so long. I had had it in possession and cultivation some five years, and had paid taxes on it. I had rented it Doyle and Callihan both. Callihan had it the first year. I cultivated it myself the next two years, and Doyle had it the

next two years; had it this year, and took his potatoes out of my way when I went to make my improvements.

Question 7th. How much of the timber used in the improvements was obtained on the place?

Answer. There was none. The government troops had cut it all off.

Ques. 8th. Did you believe that your possession for five years, and cultivating it and paying taxes on it, would make your title-claim under Sherry of such a character as to protect you in making the improvements?

96 Answer. I thought what I had paid for it and Sherry and all would protect me in placing improvements on it. I did not have any idea I was in danger of losing it.

Question 9th. What rents did Callihan and Doyle pay you?

Answer. Callihan paid me $200. Doyle was to pay $75 a year, and this year I gave him a part of the ground to cultivate the balance.

Question 10th. Why didn't you lease it for a length of time?

Answer. Because I was expecting to make money enough from one year to another to move on it.

Question 11th. Did you not know that there was great doubt about all these tax titles; that suits were pending in the courts
97 about them, and the old owners of them in many instances were claiming them?

Answer. I heard it. I seen a good deal of them that claimed them and could not get them.

Question 12th. State the names of some of them.

Answer. Mrs. McNamara. She has a house built on a government tax-title lot, and they tried to get it from her by suit, but she still holds it. I don't know [whether]* the suit is decided or not. Well, I could[n't]* think of any other just now.

Question 13th. When did you first have a talk with Mrs. McNamara about her attempt to hold these lots under the tax-title and being sued?

Answer. I think it was two or three years ago, when her husband was alive.

Question 14th. Did you talk to her or tell her that you held
98 one of the same sort? Think about this, and see if you cannot remember.

Answer. No, sir; I don't believe I did. I believe she first told my wife about it, and then she told me the suit was going on about it. Whether it is decided or not I don't know. She still has possession.

Question 16th. Please tell me the name of some other person that claimed to hold under one of these government tax titles, where the other party could not get them? Who did you talk to that led you to say a good many that claimed the land against these tax titles could not get them?

Answer. I cannot remember their names. I know the names, but I forget them. I know I heard a good deal of it while it was going on, but cannot remember the names.

99 Question 16th. Are you in earnest in prosecuting the suit of Dennis Saxton vs. Sherry and Rogers? If so, why is it that nearly a year has elapsed since Mr. Sherry has been served with subpœna to answer your bill, and yet has not answered, and no steps been taken against him to compel an answer or a judgement pro confesso?

Answer. I am in earnest in prosecuting that suit. I do not know why no steps have been taken against him, nor why he has not answered.

* In pencil.—PRINTER.

Question 17th. What tenants has M'r Sherry in possession of lot 31, and how are they cultivating it?

Answer. M'r Davie Groves is cultivating it this year. A negro man name Sterling cultivated it last year, I believe.

Recross examination:

Question 1st. Can you read or write?

100 Answer. I cannot read. I know the letters, and can spell, but cannot read printing or writing. I can scribble my name; that is all; and I have learned to do that within the last nine or ten months. And further deponent saith not.

Subscribed and sworn August 27th, 1869.

E. B. McHENRY,
D. C. & M.

Filed August 27th, 1869.

A. ALSTON, *C. & M.*

Abstract of title.

Additional conveyance pertaining to examination of title to lots 31 and 32, of Weakley tracts, made March 1st, 1869 (added by request), to show Lucy Trigg's interest in said tract.

JOHN C. McLEMORE }
vs.
LUCY TRIGG. }

Warranty deed stated May 30th, 1835, and recorded June 2d, 1835,
101 in book E, page 7, consid'n $7,280, conveys 728 acres in range 8, section 2, lying on both sides of Wolf River, being an equal undivided half of 1,456 acres, grant No. 17,997, to Rob't Weakley and John C. McLemore, lying north of and adjoining John Rice's 5,000-acre grant. Warrants title.

Duly acknowledged.

SEARS AND SMITH,
By McOMBS.

Charge, $1.00.

Filed Sept. 24th, 1869.

A. ALSTON, *C. & M.*

Answer and cross-bill of Dennis Saxton, and bond for cost on same. Filed Oct. 6th, 1869.

Not in files. Lost and can't be found.

E. A. COLE, *C. & M.*

102 The answers, joint and several, of Andrew McKinley, Luther T. Thurston, Ashley McKinley, Elizabeth A. McKinley, Anna C. McKinley, Mary C. McKinley, Crittenden McKinley, Andrew McKinley, jr., Pope McKinley, Mary Churchill, Mary Moss Churchill, Derick A. January and Julia his wife, and Robert M. Patton, to the cross-bill of Dennis Saxton, filed in this cause.

Respondents, making the usual reservations of exceptions, &c., say they have no knowledge of the execution or existence of the deed from Sherry to Saxton, of date 19th September, 1865, referred to in the answer and cross-bill of said Saxton. Its legal effect can be judged of

by the court when it is produced. It sufficiently appears from the answer and cross-bill of said Saxton that the only claim to the lot 31, asserted by the said Sherry at the date of this alleged deed, was the
103 "insurrectionary tax title" (as such claims are designated in common parlance), which is shown in the original pleadings; which pretended title, these respondents are advised, was and is an utter nullity in law, and only constituting a cloud upon the title of respondents, which it is the object of their original bill to have removed.

Respondents know nothing of the consideration alleged to have been paid by said Saxton to said Sherry further than this, that his deposition is taken in the cause, in which he makes statements in reference thereto. They know nothing of the mistake in the number of the lot; but the answer and cross-bill admits that number 31 is the correct number, and this is the number in respondents' original bill, as will be seen by an inspection thereof.

Respondents admit the possession of said Saxton, but know nothing of the payment of taxes by him, as alleged in the answer and cross-bill. Respondents having no knowledge as to the payment of taxes on the property by said Saxton, as stated by him, they neither admit
104 nor deny this allegation, but require proof. Nor do they know anything about improvements being placed upon the lot 31 by said Saxton, further than such is their information as derived from the deposition of said Saxton and Thomas, on file in this cause; the extent and value of the same they know nothing of, except from his deposition aforesaid.

These respondents deny the allegations of the answer and cross-bill, that the said Saxton did not have notice that the lot No. 31 was in controversy in this suit; they are advised that the *les pendens* affects him with notice, and that inasmuch as he is a defendant to the proceeding, and represented by solicitors, that he is affected with notice by construction of law, which is not capable of being questioned, but is absolutely conclusive upon him; but, aside from this consideration, they submit that by his own allegations he had actual notice; for he admits that the bill disclosed the number of the lot correctly. It will be
105 seen the bill further shows it was of the Weakley tract, and indicating the chain of title sufficiently to show any one claiming the property where and what it was. And it is further alleged in the bill that the said Sherry claimed the lot by the "insurrectionary tax title"; and it sufficiently appears that the said Saxton well knew the lot was so claimed; and for other reasons to be shown at the hearing the said Saxton had actual notice of the same, and placed his improvements upon the lot with notice of complainants' title, and of the worthlessness of his own and his vendors'.

Respondents are advised that no decree of reference to take an account should be ordered except of the reasonable rents and profits of both lots during the time the possession has been wrongfully withheld from them.

Any allegations not already responded to are not admitted, *by* the said Saxton is required to make strict proof of the same.

106 And having fully answered, they pray to be hence dismissed, &c.

HEISKELL, SCOTT & HEISKELL, *Sols.*

Oath waived.

W. M. RANDOLPH,
Sol. for Saxton.

Order to file amended bill.—Ent. Nov. 11, 1869.

In this cause, upon application of compl'ts, they have leave to file an amended bill.

Amended bill.

The amended bill of complaint of Andrew McKinley, Luther T. Thurston, executors and trustees of the will of John McKinley, deceased; Ashley McKinley, Elizabeth A. McKinley, Anna C. McKinley, Mary C. McKinley, Crittenden McKinley, Andrew McKinley, jr., and
107 Pope McKinley, minors, who sue by their next friend, Andrew McKinley; Mary Churchill, Mary Moss Churchill, a minor who sues by her next friend Mary Churchill; Julia January and her husband Derick A. January, vs. Henry T. Bragg, Frank S. Bragg, Edward V. Bragg, F. T. Sweet and Isabella his wife, formerly Isabella G. Bragg; Fannie C. Bragg, Mary E. Adams (formerly Mary E. Bragg), and her husband Thomas P. Adams, all residents of Shelby County, Tennessee.

Humbly complaining, your orators and oratrix would respectfully represent to your honor that on the 7th day of May, 1867, they, in conjunction with Robert M. Patton, filed their original bill in this honorable court against one Patrick Sherry and one Dennis Saxton, in which complainants asserted title to two certain tracts or parcels of land lying in Shelby County, Tennessee, and near to the city of Memphis, being
108 known and described as lots 31 and 32, part of the Weakley portion of the McLemore and Weakley grant, No. 17997, of 1,456 acres, and laid down on Rucker's map of Memphis as lots 31 and 32, and they alleged that the testator, John McKinley, and their co-complainant, Robert M. Patton, were tenants in common of these tracts, holding the same in undivided moieties; that the said Sherry had illegally obtained possession of the same, claiming to hold these lands by virtue of some paper certificate or certificates which purported to be a tax-title under the law of Congress in relation to the sale of lands in insurrectionary districts for taxes which the bill alleges were illegal and utterly void, but constituted a cloud upon their title; these complainants being devisees of said John McKinley, and entitled to his interest in said property. The bill further alleges that the said Saxton claimed an interest by virtue of some pretended conveyance from the said Sherry.
109 The bill prayed to have the cloud removed, to be restored to possession, &c. Reference is made to the bill for more particular recitals.

The defendants answered, and the cause is in progress of preparation for a hearing at the ensuing November term.

By way of amended, these complainants, executor & trustees and devisees of the said John McKinley, respectfully represent to your honor that in deraigning their title to the said undivided moiety in said lands they find that on the 12th day of August, 1860, A. B. White, the clerk & master of the chancery court at Nashville, by virtue of and in obedience to a decree of that court, sold and conveyed these lands to one Henry Bragg. The original deed, duly probated and registered, is herewith attached as Exhibit A to this amended bill.

On the 6th day of March, 1850, said Bragg executed his title-bond to the said John McKinley, wherein he bound himself to make him a warranty deed to the undivided moiety of the said lots 31 and 32
110 within six months from the date of the said title-bond, and directs that the chancery court at Franklin, Tennessee, vest title in said

McKinley. This title-bond was duly probated and registered, as will be seen by the abstract of title filed with the papers in the original cause.

Subsequently, on the 14th day of February, 1851, the said Henry Bragg sold and conveyed by his warranty deed of that date the other undivided moiety of said lots 31 and 32 to the said Robert M. Patton, and reciting in said deed to Patton that he had sold and conveyed the other undivided moiety to John McKinley. Complainants have no doubt but that the deed was actually made as required by the title-bond, and as seems evident from the recital in the last above-mentioned deed; but they state that the same cannot be found, nor can they find any record of the same upon the register's books of Shelby County; they also represent that the said Henry Bragg is dead, and that the said John
111 McKinley being also dead they can obtain no clue as to the whereabouts of this deed.

They further state that the consideration money was paid up by the said John McKinley, and as before stated, they have no doubt but that the deed was, in fact, actually executed and delivered by said Henry Bragg to said John McKinley, and they are advised by counsel that most probably their title is technically perfect as it now stands. But out of abundant cautions, and in order that there may be no embarrassment upon any future sale they may wish to make of their interests in this property, they are advised to bring the defendants to this amended bill, who are the heirs of said Henry Bragg, before the court, in order to have any semblance of title that may be remaining in them divested by decree of the court, and vested in these complainants.

They state that the said Henry Bragg departed this life intestate several years ago, leaving the defendants named in the
112 caption his only heirs at law, except the said Thomas Adams, who intermarried with the said Mary, who was a daughter of the said Henry Bragg, and said Sweet, who intermarried with another daughter.

These defendants do not set up any claim to this property, nor do they deny your orator and oratrix' claim and right to the said lands, but the said being minors, a conveyance from them might be to some extent imperfect.

The premises considered, your orator and oratrix pray that the parties named in the caption be made defendants, and required to answer. That a guardian *at litum* be appointed for the minor defendants and required to answer and defend for them; that on the hearing, all right, title, and interest of these defendants be divested out of them, and vested in your orators and oratrix, as they are entitled to hold,
113 under the bill of John McKinley, deceased; that the same may be done by decree of the honorable court. And for all such o her, further, and general relief as they may be entitled to in the premises.

And as in duty bound, &c.

HEISKELL, SCOTT & HEISKELL.
Sol's.

STATE OF TENNESSEE,
County of Shelby, ss:

Personally appeared before A. Alston, clerk and master of the chancery court of Memphis, John D. Coffee, who made oath in due form of law that the statements made in the foregoing amended bill, of our knowledge, are true, and those made upon information believes to be true.

JOHN D. COFFEE.

Sworn & subscribed before me this 20th day of November, 1869.

BENJAMIN COLEMAN,
D. Clerk & Master.

114 *Exhibit A to amended bill.*

This indenture made and entered into the 12th day of August, A. D. 1850, between Jackson B. White, clerk & master of the chancery court holden at Nashville, in the State of Tennessee, of the first part, and Henry A. Bragg, of the county of Shelby and State of Tennessee, of the second part.

Whereas, at the court of chancery held at Franklin, for the district composed of the counties of Davidson and Williamson, at the October term, 1845, it was, among other things, ordered, adjuged, and decreed by the said court in a certain cause then pending in said court between Narcissa Hickman et al., complainants, and Letitia A. Braham et al., defendants, that certain real estate, hereinafter particularly described, be sold by or under the superintendence of R. L. Weakley, jr., commissioner, giving 40 days' notice of the time and place of sale, taking notes with good security for the payment of the purchase money, and
115 retaining a lien on the same until the notes were paid;

And whereas the said commissioner as aforesaid, in pursuance of said order and decree, did on the 20th day of March, 1846, sell at public auction, the real estate and appurtenances hereinafter particularly described, and having given notice of the time and place of sale agreeable to the order aforesaid, at which sale the said premises, hereinafter described, was struck off to Henry A. Bragg, of the second part of these presents, for the sum of five hundred and eighty-five & $\frac{30}{100}$ dollars, for which amount the said Henry A. Bragg had executed his notes as required by the terms of the decree ordering and decreeing said sale;

And whereas the said commissioner, at the April term, 1846, of said court, made report of said sale, and which was in all things confirmed, and the clerk and master was ordered, upon payment of the purchase money, to execute a deed to the said purchaser;

And whereas said cause has been transferred to the chancery court at Nashville, where it is still pending, and said Henry A. Bragg
116 having paid his notes so executed as above for the purchase money;

Now, therefore, this indenture witnesseth that the said Jackson B. White, clerk and master in chancery as aforesaid, in order to carry into effect the said sale, so made as aforesaid, in pursuance of said decree, and of the sum of three dollars paid to said Jackson B. White, clerk and master as aforesaid, the receipt whereof he doth hereby acknowledge, hath granted, bargained and sold, released, conveyed and confirmed, and by these presents doth grant, bargin, sell, release, convey and confirm unto said Henry A. Bragg, of the second part, and to his heirs and assigns forever, two certain pieces or parcels of land lying and being in Shelby County, Tennessee, and being lots Nos. 31 and 32, in the plan of lots adjacent to Memphis, belonging to the heirs of Rob't Weakley, esq., and which plan is filed with the report of sale, and said lots are bounded as follows, to wit:

117 Lot No. 31, beginning at a stake on the Randolph and Raleigh road, the northeast corner of lot 29; thence west 1,010 feet, crossing a bayou to a stake; thence north 800 feet to a stake; thence east 700 feet to said road; thence with said road southeast to the beginning, containing 6.84 acres.

Lot No. 32, beginning on the new road at a stake, the northwest corner of lot No. 30; thence east 748 f't to a stake; thence north 800 feet to a stake; thence west 903 feet to a stake on the new road; thence with said road 810 f't to the beginning, containing 6.58 acres.

Together with all and singular the rights, privileges, and appurtenances to the same belonging or in anywise appertaining. To have and to hold all and singular the said premises above mentioned and described, and hereby granted and conveyed, or intended so to be, with the appurtenances, unto the said Henry A. Bragg, his heirs and assigns forever.

In witness whereof the said Jackson B. White, master in chan-
118 cery as aforesaid, hath set his hand and seal, the day and year first above written.

[L. S] J. B. WHITE, *C. & M.*

STATE OF TENNESSEE,
Davidson County:

Personally appeared before me, F. R. Cheatham, clerk of the county court of said county, the within named J. B. White, the bargainer, with whom I am personally acquainted, and who acknowledged that he, as clerk, executed the within deed for the purposes therein contained.

Witness my hand at office this 16th day of April, 1850.

F. R. CHEATHAM, *Clerk*,
By L. P. CHEATHAM, *D. C.*

Received State tax and clerk's fee, $.30 c't's.

W. L. DEWOODY,
C'k C't'y , *Shelby County, Tenn.*,
By JAMES ROSE,
Dep. C'k.

STATE OF TENNESSEE,
Shelby County:

119 The foregoing deed, with the clerk's certificate thereon endorsed, was duly registered im my office in book No. 6, pages 81, 82, and 83, Oct. 1st, 1850.

WM. R. REAVES, *Reg'r*,
By J. W. KING, *D. R.*

JOHN H. BRINKLEY, *Memphis, Tennessee:*

Governor R. M. Patton, Florence, Alabama, owns half high ground ½ mile from limits. Value $600 per acre.

St. tax, 5; cl'k, 25 = 30, p'd by W. P. R. Will be paid at Kenter store. Register's fee, 1.50; State & clerk fee, 30. Amount, $1.80.

This deed was filed in my office for registration on the 23d day of Sept., 1850, at 5 o'clock p. m., and so noted in note book No. 2, page 170.

W'M P. REAVES, *Register.*

120 Filed 20th day of November, 1869.

A. ALSTON, *C. & M.*

Cost bond.

We, Andrew McKinley, and the other complainants acknowledge ourselves indebted to H. T. Bragg et al. in the sum of two hundred and fifty dollars, to be void if the said complainants in an amended bill which has this day been filed in the chancery court of Memphis against

the said H. T. Bragg et al. shall pay all such costs as may be awarded against them by the court in its decrees and orders in said bill.

This 20th day of November, 1869.

JOHN D. COFFEE. [SEAL.]

Filed 20th day of Nov., 1869.

A. ALSTON, *C. & M.*

121 *Subpœna to answer. Issued 22d day of Nov.*, 1869. *A. Alston, C. & M.*

The State of Tennessee to the sheriff of Shelby County:

Summon Henry T. Bragg, Edward V. Bragg, Fannie C. Bragg, Mary E. Adams, formerly Mary E. Bragg, Frank S. Bragg, Isabella G. Bragg, now Mrs. F. T. Sweet, F. T. Sweet, and Thomas P. Adams, if to be found in your county, to appear before the chancery court of Memphis, at the court-house in the city of Memphis, on the first Monday in December next, then and there to answer the amended bill of complaint of Andrew McKinley and Luther L. Thurston, a copy of which accompanies this writ. Herein fail not, and have you then and there this writ.

Witness Augustin Alston, clerk and master of said court, at the office in the city of Memphis this second Monday in November, 1869, and 93d year of American Independence.

122 AUGUSTIN ALSTON,
Clerk & Master,
By R. J. BLACK, *D. C. & M.*

R. B. Hays is hereby appointed special deputy sheriff of Shelby County to execute and return the within process.

Given under my hand and seal this 24th day of November, 1869.

[SEAL.] A. P. CURRY,
Sheriff Shelby County.

Came to hand this 25th day of November, 1869, and executed same day on all the within named parties, except Thomas P. Adams and his wife Mary. I also delivered copy of bill to Henry Bragg.

R. B. HAYS,
Sp. D. Sheriff.

We acknowledge service of this writ, Nov. 29th, 1869.

THOS. P. ADAMS.
MARY E. ADAMS.

123 *Affidavit of W. L. Scott.*

ANDREW MCKINLEY & OTHERS
vs.
PATRICK SHERRY & OTHERS. } 1890. N. R. D.

W. L. Scott, esq., one of the complainants' solicitors, makes oath that the subpœna to answer as issued in this cause on the amended bill, as shown by the rule docket on the 22d day of November, 1869, was handed to him after it was served by the officer, for the purpose of enabling him to prepare an order appointing a guardian ad litum, and after it came into his possession for this purpose it was by him lost or unintentionally mislaid, and, after diligent search, he has been unable to serve the same; that upon this subpœna to answer was endorsed the

return of the officer showing service of the subpœna to answer upon all the defendants except Thomas P. Adams and wife, on the 26th of
124 Nov., 1869, and copy of amended bill delivered to Henry T. Bragg; and there was also endorsed on said subpœna of that date the acknowledgments of service by said Thomas P. Adams and Mary E. Adams, with the names Thomas P. Adams and Mary E. Adams signed thereto; and that the subpœna to answer, with endorsements hereto attached, is a substantial copy of the lost subpœna.

W. L. SCOTT.

Subscribed and sworn to before me Dec. 24th, 1869.

BENJ. COLEMAN.

Filed December 24th, 1869.

A. ALSTON, *C. & M.*

Substitute subpœna to answer amended bill. Issued 22d day of November, 1869.—A. Alston, C. & M.

The State of Tennessee to the sheriff of Shelby County:

125 Summon Henry Bragg, Fannie C. Bragg, Thomas P. Adams & wife Mary E. Adams, Frank L. Bragg, Isabella G. Sweet, formerly Isabella G. Bragg, and husband Sweet, and Edward V. Bragg, if to be found in your county, to appear before the chancery court of Memphis, at the court-house in the city of Memphis on the first Monday in December next, then and there to answer the amended bill of complaint of Andrew McKinley and others, a copy of which accompanies this writ. Herein fail not, and have you then and there this writ.

Witness, Augustin Alston, clerk & master of said court, at the office in the city of Memphis, this second Monday in May, 1869, and 93d year of American Independence.

R. B. Hays is specially deputised to execute this process.
Nov. 22d, 1869.

A. P. CURRY,
Sheriff Shely County.

Came to hand 22d day of November, 1869, and executed upon
126 all the defendants except Thomas P. Adams and Mary E. Adams, and delivered a copy of the bill to Henry Bragg the 26th day of Nov., 1869.

A. P. CURRY,
Sheriff Shelby Co.,
By R. B. HAYS,
Sp. D. Sheriff.

Filed Dec. 24th, 1869.

A. ALSTON, *C. & M.*

We acknowledge service of this subpœna the 28th day of Nov., 1869.
THOMAS P. ADAMS.
MARY E. ADAMS.

Order allowing substituted subpœna and appointing Thomas P. Adams guardian ad litum.

ANDREW MCKINLEY AND OTHERS
vs.
PATRICK SHERRY AND OTHERS. } 1890. N. R. D.

It appearing from the affidavit of W. L. Scott, esq., one of the solicitors of complainants, that the subpœna to answer issued 22d November,

1869, upon the amended bill, after it had been served and the re-
127 turn of the officer endorsed thereon, was handed to this solicitor in order that he might have it before him in drawing up an order appointing a guardian ad litum, and that he has lost or unintentionally mislaid the same, and that it was, as appears from the return thereon endorsed, served upon all the defendants except Thomas P. Adams and wife, and the copy of the bill served upon one of the defendants, and that there was endorsed thereon the acknowledgement of services signed by the said Thomas P. Adams and by his wife, the said Mary E. Adams, and having produced in court a subpœna marked "Substituted subpœna to answer," he is permitted to file the same as a paper and process in the cause, and to have the same marked "Filed December, 1869."

And it appearing to the court that the minor defendants, Frank S. Bragg, Fannie C. Bragg, Isabella G. Sweet (formerly Isabella G. Bragg), and Edward V. Bragg, have been regularly served with subpœna to answer, and that they have no regular guardian, and that Thomas P. Adams, their co-defendant and kinsman, is a suitable person to
128 be appointed to represent and defend their interests, he is therefore appointed their guardian ad litum for them, and will defend for them in this cause.

E. Dec. 24, '69. M. B. 12, p. 301.

Order electing certain parties to be notified of taking depositions.

CHANCERY CLERK'S OFFICE,
Dec. 28th, 1869.

ANDREW MCKINLEY ET AL. *vs.* PATRICK SHERRY ET AL. } 1890. N. R.

In the above cause it appearing unnecessary that all the parties defendant therein should be served with notice of taking depositions, it is therefore, on motion of counsel for complainants, ordered that notice need only be served on T. P. Adams, guardian, &c., and the attorneys of record for either defendants therein.

A. ALSTON, *C. & M.*,
By R. J. BLACK, *D. C. & M.*

129 Ent. Dec. 29, 1869.

Answer of T. P. Adams, guardian ad litum.—Filed Jan'y 10, 1870.

Not in the files; lost and can't be found.

E. A. COLE, *C. & M.*

Notice of taking int's.—Issued Dec. 28th, 1869.—*A. Alston, C. & M.*

CHANCERY CLERK'S OFFICE,
Memphis, Dec. 28th, 1869.

ANDREW MCKINLEY ET AL. *vs.* PATRICK SHERRY ET AL. } 1890.

Messrs. T. P. Adams and Randolph and Hammond:

You are hereby notified that interrogatories to be propounded to Rob-

ert M. Patton have this day been filed in the above cause in behalf of complainants.

130 Respectfully,

A. ALSTON, *C. & M.*,
By R. J. BLACK, *D. C. & M.*

Came to hand Dec. 28th, 1869; executed same day by reading the within to Randolph & Hammond. Dec. 31st, 1869, on T. P. Adams.

A. P. CURRY, *Sheriff.*
By A. W. TAYLOR, *D. S.*

Deposition of R. M. Patton.

ANDREW MCKINLEY ET ALS. *vs.* PATRICK SHERRY ET ALS. } 1890. N. R. D.

Chancery court of Memphis.

Interrogatories for Robert M. Patton (on behalf of complainants), a non-resident witness.

Question 1st. State your age, residence, and whether or not you are a party to this suit.

131 Question 2d. State all you know in relation to the purchase by John McKinley, the ancestor of complainants, from Henry Bragg of the undivided one-half interest in lots 31 and 32, described in the pleadings, of which you claim to be the owner of the other undivided half, being a part of the McLemore and Weakley grant, lying not far from the corporation line of the city of Memphis. State whether or not the consideration money was paid by said McKinley to said Bragg for this interest; if so, in what way. If in satisfaction or pre-existing debt, state the amount of said debt; in short, state fully all you know about the matter.

HEISKELL, SCOTT & HEISKELL,
Solicitors.

STATE OF TENNESSEE, *Shelby County:*

I, Augustin Alston, clerk and master of the chancery court of Memphis, do hereby certify that the foregoing comprises a full, true, and perfect copy of interrogatories filed in the cause of Andrew Mc-

132 Kinley et als. vs. Patrick Sherry et als., as the same appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in the city of Memphis, this 15th Jan'y 1870.

A. ALSTON, *C. & M.*
R. J. BLACK, *D. C. & M.*

Filed Dec. 28th, 1869. Issued Jan'y 16th, 1870.

A. ALSTON, *C. & M.*

ANDREW MCKINLEY ET AL. *vs.* PATRICK SHERRY ET AL. }

In the chancery court of Memphis, Shelby County, Tennessee.

Deposition of Robert M. Patton, a witness for complainants in the above case, taken upon interrogatories, on the 3d day of February, 1871, without the presence of either the complainants or defendants, at the office of the register in chancery of the 2d district of the northern chancery division of Alabama.

133 The said witness, R. M. Patton, aged years, being duly sworn, deposeth:

To 1'st inter. saith: I am over sixty years of age. I reside two and one-half miles from Florence, Alabama. I am owner of one undivided half of lots 31 and 32, the property involved in this suit, as will appear by Henry A. Bragg's deed to me bearing date 14th February, 1851, which reads (after describing the meet's and bounds of the two lots) as follows: The other undivided half of said lots No. 31 and 32 having been sold and surveyed by me to Col. John McKinley, of Louisville, Kentucky.

To 2'd inter. saith: Henry A. Bragg was considerably indebted to Col. John McKinley and myself, on account of debts paid as his security. The two lots, No. 31 and 32, in controversy were purchased by Bragg from the estate of Robert Weakley. I being the administrator of said estate, Bragg paid for the lots, and in payment to Col. McKinley
134 and myself, on account of his indebtedness to us, he sold to Col. John McKinley and me, at about double the price paid by him for said lots, undivided halves of these two lots, as will be shown by Bragg's deed to me, which, if necessary, can be filed as part of this answer. Bragg frequently told me of the fact that he had sold to Col. McKinley, in payment on debts due him, the undivided half of these two lots. Bragg I regarded an honest, Christian gentleman. He had but little, if any, money with which to pay Col. McKinley and me as his friends in trouble. These two lots, 31 and 32, are a part of the Weakley survey, laying near the city of Memphis. Bragg, or his estate, owes M'r Morey at this time, and I have no doubt he is also indebted to Col. McKinley's estate. And further this deponent saith not, but hereunto subscribes his name.

R. M. PATTON.

The foregoing deposition was taken before me as stated in the
135 caption, and reduced to writing by the witness. And I certify that I am not interested in the cause, nor of kin or counsel to either of the parties, and that I sealed it up and delivered it to the postmaster at Florence, Alabama, without being out of my possession or altered after it was taken.

Given under my hand the 3d day of February, 1870.

J. S. CHISHOLM,
Register in Chancery, Florence, Alabama.

Commissioner's fee $5.00.

Filed February 7th, 1870, being received from W. L. Scott with seal unbroken.

A. ALSTON, *C. & M.*

Deed.—From Henry A. Bragg to R. M. Patton.

This indenture, made the 14th day of February, in the year of our Lord one thousand eight hundred and fifty-one, between Henry A. Bragg, of the county of Shelby, and State of Tennessee, of the one part,
136 and Robert M. Patton, of the county of Lauderdale, and State of Alabama, of the other part, witnesseth:

That the said Henry A. Bragg, for and in consideration of the sum of six hundred and fifty dollars to him in hand paid by the said Robert M. Patton, the receipt whereof is hereby acknowledged, hath given, granted, bargained, aliened, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, alien, convey, and confirm unto the said Robert M. Patton, his heirs and assigns forever, one undivided half of two certain pieces or parcels of land, lying and being in Shelby County, Tennessee, and being lots No. 31 and 32, in the plan of lots

adjacent to Memphis, belonging to the heirs of Robert Weakley, esq., and which plan is filed with the report of sale, and said lots are bounded as follows:

Lot No. 31, beginning at a stake on the Randolph and Raleigh road, the northeast corner of lot No. 29, thence west 1010 ft., crossing
137 a bayou to a stake, thence north 800 feet to a stake, thence east 700 feet to said road, thence with said road southeast to the beginning, containing $6\frac{84}{100}$ acres.

Lot No. 32, beginning of the new road at a stake, the northwest corner of lot No. 30, thence east 742 feet to a stake, thence north 800 feet to a stake, thence west 903 feet to a stake on the new road, thence with said road 810 feet to the beginning, containing $6\frac{55}{100}$ acres, the other undivided half of said lots No. 31 and 32, having been sold and conveyed by me to Col. John McKinley, of Louisville, Kentucky.

To have and to hold the aforesaid land with all and singular the rights, proofs, emoluments, hereditaments, and appurtenances of, in, and to the same belonging or in anywise appertaining, to the only proper use and behoof of him, the said Robert M. Patton, and his heirs and assigns forever. And the said Henry A. Bragg, for his heirs, executors, and administrators, do covenant and agree to and with
138 the said Robert M. Patton, his heirs or assigns, the before recited land and bargained premises, he will warrant and forever defend the right, title, interest, or claim of all and every person whatsoever.

In witness whereof the said Henry A. Bragg hath hereunto set his hand and affixed his seal the day and year above written.

HENRY A. BRAGG. [SEAL.]

Signed, sealed, and delivered in presence of—

STATE OF TENNESSEE,
Shelby County:

Personally appeared before me, W. L. Dewoody, clerk of the county court of said county, Henry A. Bragg, the bargainer within named, and with whom I am personally acquainted, who acknowledges the execution of the within deed for the purposes therein contained. Witness my hand at office February 14th, 1851.

W. L. DEWOODY, *Clerk.*
By JAMES ROSE, *D. C.*

Rec'd State tax.

139 STATE OF TENNESSEE
Shelby County:

The foregoing deed with the clerk's certificate thereon endorsed was duly recorded in my office in book No. 7, pages 4 and 5, March 17th, 1851.

W'M P. REAVES,
Register.

St., 5; cl'k, 25—30; register, 1.50—$1.80.

The within deed was filed in my office for registration on the 18th day of February, 1851, at 5 o'clock p. m. and so noticed in note book No. 2, page 186.

W. P. REAVES, *Register.*

Will of John McKinley—Filed July 16th, 1869.

I, John McKinley, of the county of Jefferson and the State of Kentucky, do make, ordain, and establish this my last will and testa-
140 ment, hereby revoking all former papers of a testamentary character by me executed.

First. I give and bequeath unto my wife the house and lot in the city of Louisville, on the south side of Main street between Fifth and Sixth street', conveyed to me by Stewart and Owen, to be held by her during her natural life, also the lot on the west side of Fourth street in said city, fifty-nine and one half feet front and running back two hundred feet on Curran street to be held by her in fee simple. If a house is not built thereon during my life, I direct my executors, after first paying my debts, to erect a house and make other necessary improvements on said lot, including paving and grading, not exceeding in cost the sum of thirty-six hundred dollars. I also direct my executors to purchase real estate for my wife in the city of Louisville, which she shall hold during her natural life, which shall yield an annual income of
141 three hundred dollars, or they shall pay to her during life, said annual sum of three hundred dollars in quarterly payments, and of the general income of the estate hereinafter directed to be purchased. I also give and bequeath to my said wife to be held by her during her natural life the following, to wit: Daniel, a negro man about twenty-one years of age: Charlotte, a negro woman about twenty-three years old and her three children; and Nelly, a negro girl about eleven years old, and Jerry a boy about eight years old. I also give and bequeath to her for the term of her natural life my carriage and horses, and such household furniture as she may select.

Second. In addition to what I have already given my son, Andrew McKinley, I give and bequeath to him the house and lot where I now reside for the term of his natural life; remainder to his children in fee-simple, being that part of tract of sixteen acres purchased of Sam'l Churchill, beginning at the northeast corner of said tract and
142 running thence westward with the southern line of Kentucky street fourteen poles to a stone, the corner of a lot conveyed to said Andrew McKinley in trust for his sister, Mary Churchill, and her children; thence southwardly along the line of said last-mentioned lot to the southern line of said sixteen-acre lot; thence eastwardly along said southern line to the Fat-lick road; thence along the western line of said road to the beginning. I also give and bequeath to him, Spencer, a negro man, about forty-two years of age; Edy, wife of said Spencer, and about forty-two years old; Thomas, son of said Spencer and Edy, about four years old. Also, the law and political books contained in my library.

Third. I direct my son, as trustee, to sell the following property, to wit: A house and lot on the north side of Market street, in Louisville, between Fifth and Sixth st's, conveyed to me by Andrew Buchanan and wife; two lots—one in the town of Portland, and one in
143 Shippingport, in the county aforesaid, conveyed to me by John Rowans and wife—an undivided one-half of thirteen acres of land conveyed to me by Henry A. Bragg, and lying in or near the city of Memphis, Tenn.; also, two tracts of land—one containing about one hundred acres of land, the other about forty-three—adjoining the town of Florence, Alabama; also, a four-acre lot, with a dwelling-house thereon, known as my former residence, together with the lots adjacent thereto, in all containing about twenty-two acres; also, seventy-five

shares of stock in the Florence Bridge Company; also, all my other improved lots in said town of Florence, and land adjacent thereto; also, a tract or tracts of land containing between seven and eight hundred acres, patented to me by the United States, and lying in the county of Lawrence, Alabama; also, a house, lot, and vacant lot in the town of Friance, in the last-named State; also, a tract of land containing one hundred and five acres and one-hundredth of an acre, lying in
144 the county of Lauderdale, Alabama, at the foot of Muscle Shoals, including the Campbell's Ferry landing; also, Otter Island, lying in the Tennessee River, containing fifty-two acres, being just above the ferry known as Lamb's Ferry; also, a negro girl named Martha, aged about twelve years. One-half the proceeds of all such sales, together with one-half of all monies due me, and not otherwise appropriated by this will, shall, when received, be invested by said Andrew McKinley in real estate in or near the city of Louisville, to be held by him for the term of his natural life, then to be equally divided among his children in fee-simple. The other half of all said funds shall be invested by my said son in productive real estate in the city of Louisville, and held by him in trust for my said daughter, Mary Churchill, during her life, and then for her children until they respectively arrive at age, when the same shall be equally divided between them.

145 Fourth. I give and devise to my said son and his heirs forever all my interest in the mill property lying on the west side of Seventh st., in Louisville, conveyed to Luther T. Thurston and myself by Willis Hodges, subject to my contract with said Thurston, one-half to be held by him during his life, and remaining to the children in fee-simple; the other half to be held by him in trust for my daughter, Mary Churchill, during her life, with remainder to her children forever. I empower my said son, however, if he shall see fit, to sell my interest in said mill property, giving said Thurston the prefer*mance* in making said sale, and invest the proceeds in the manner and for the purposes expressed in third clause of this will.

Fifth. My will is that at the death of my wife the real estate hereinbefore bequeathed to her for life shall be had one-half by my said son for and during the term of his natural life, remainder to his children in fee simple; the other half shall be held by him and his heirs
146 forever in trust for my daughter Mary Churchill during her life, and then to be equally divided between her children when they become of full age.

Sixth. I direct, at the death of my wife, the silver and plated ware to be divided as follows:

I give to my son Andrew McKinley the tea sett and all the spoons. The pitcher, tumblers, forks, and plated ware I give to my said son in trust for my daughter Mary Churchill. She is to have the use of the same during her life, and then to my granddaughter Julia Churchill, if she be living; otherwise to Mary Moss Churchill. The negroes and other personal property shall be equally divided, one-half to go to my son Andrew McKinley, and the other half to be held by him in trust for my daughter Mary Churchill during her life, and then to her children.

Seventh. I give and bequeath to my son, in trust for my said daughter Mary Churchill during her life, and then to her children, all the
147 miscellaneous books in my library.

Eighth. I direct the rents and profits growing out of the estate held by my said son in trust for my said daughter Mary Churchill and her children, after paying repairs, insurance, taxes, and the expenses of

this trust, to be devoted to the maintenance and support of her family and the education of her children, and no other purpose whatever.

Ninth. After the death of my said daughter Mary Churchill, I direct both the real and personal estate herein granted to my son in trust for her benefit during her natural life (except the silver which I have disposed of in the sixth clause of this will) to be distributed and conveyed in equal portions to her children in fee simple whenever they attain full age or marry.

Tenth. I direct my executor to invest the sum of one thousand dollars (which has been placed in my hands for that purpose by Miss Elezey and my wife), if not invested by me during life, in productive real
148 estate in the city of Louisville, yielding an annual income of at least ten per cent., for Elizabeth M. Pope, of Mississippi, the niece of my wife, and to convey *to* the same to a suitable trustee for her sole and separate use during her life—remainder to her heirs; or to invest said sum of one thousand dollars in a lot in said city, unimproved, with power to the trustee to *a* sell a part thereof when he may think it proper and beneficial, and to improve with the proceeds of said sale the remainder thereof.

Eleventh. I give and bequeath my watch to such grandson as may first arrive at the age of twenty-one years.

Twelfth. No change I may make during my life in my estate, either by the sale of any part thereof, nor by the purchase of any other property, shall effect the provisions of this will as to the remaining part or parts thereof, but any property or money thus acquired shall pass to my said son, and be disposed of according to the general provisions of this will.

149 Thirteenth. I hereby appoint my son, Andrew McKinley, and my friend, Luther T. Thurston, executors of this will, and direct that no bond or security be required of them. I direct my son as trustee for my said daughter, Mary Churchill, both as to the property contained in a deed of trust bearing even date herewith to file an annual account of all receipts and expenditures of said trust estate in the office of the clerk of the county court of Jefferson County aforesaid, after submitting said account to said Luther T. Thurston, whose certificate of its correctness shall be a good voucher and operate as a discharge of the trustee.

This will is signed, acknowledged, and executed as my last will and testament in the presence of the subscribing witnesses, who are requested by me to attest the same as such, and I, being unable from bodily infirmity to write my own name, the same is written by Henry Pirtle, at my request and in my presence, this second day of March, 1852.

(The words "and his heirs forever," which are interlined twice
150 in the fourth page of this will, were written before the same was executed by the direction of the testator, John McKinley.)

Signed by Henry Pirtle for the testator in his presence.

Signed by each of us—

HENRY PIRTLE,
N. WOLFE,
THOMAS P. SMITH,
Witnesses.

STATE OF KENTUCKY:

At a county court held for Jefferson County at the court-house in the city of Louisville, on the fourth day of August, 1852, the foregoing

instrument of writing, purporting to be the last will and testament of John McKinley, deceased, late of this county, was produced in court and proven by the oaths of N. Wolfe and Thomas P. Smith, subscribing witnesses thereto, whereupon the same was established by the court to be the last will and testament of John McKinley, dec'd, and ordered to be recorded and is recorded in my office as clerk of said court.

Att. CURRAN POPE, *Clk.*

151 STATE OF KENTUCKY,
Jefferson County, set:

I, I. Jack Cown, clerk of the county court of Jefferson County, in the State of Kentucky, and keeper of the seal of said court, do certify that the foregoing nine pages contain a full, and true, and complete transcript of the record of John McKinley's will, recorded in the clerk's office of said court, and the order of said court establishing said will, and admitting it to probate, and a complete and full copy of said will, and the order of said court.

In witness whereof, I hereto set my hand and said seal this 19th day of April, 1869, and in the 77th year of the commonwealth.

T. JACK COWN, *Clerk.*

I, W. B. Hoke, judge of the county court of Jefferson County, in the State of Kentucky, do certify that T. Jack Cown was, at the date
152 of the foregoing certificate by him signed, the clerk of said court and keeper of its seal, and that the attestation by him made to the above and foregoing certificate, and to the copy of the will of John McKinley, dec'd, is in due form, and that the attestation of said clerk is in due form. In witness whereof, I hereto set my hand this 10th day of April, 1869.

W. B. HOKE,
Judge Jefferson County Court, Ky.

Presented to the court at the July term, 1869, and ordered to be recorded.

Recorded July 23d, 1869.

JOHN LOAGUE, *Clerk.*
By BERNARD COLL, *D. C.*

STATE OF TENNESSEE,
Shelby County:

I, John Loague, clerk of the county court of said county, do hereby certify that the above and foregoing page and hereto attached
153 writing contain a full, true, and perfect transcript of the last will and testament of John McKinley, deceased, together with order of probate of the Jefferson County court, Ky., and the certificates with reference thereto, as the same appears of record will-book B, page 280, &c., now in my office.

Witness my hand and seal of office, at office in Memphis, Tennessee, this 3d day of December, 1869.

JOHN LOAGUE, *Clerk,*
By BERNARD COLL, *D. C.*

Filed 17th day of March, 1870.

A. ALSTON, *Clerk & Master.*

STATE OF TENNESSEE,
Shelby County:

The foregoing instrument with clerk's certificate, was filed in my office for registration on the 20th day of October, 1870, at 10.45 o'clock a. m.,

and noted in note book No. 7, page 15, and was recorded on the
154 24th day of October, 1870, in record book No. 75, page 611, 612, 613, 614, 615 and 616.

Fee, 5, paid; due.

JOHN BROWN, *Register*,
By J. C. BUSTER, *D. R.*

Answer of Dennis Saxton.

ANDREW MCKINLEY AND OTHERS
vs.
PATRICK SHERRY AND OTHERS.

In chancery court of Memphis, Tennessee.

The answer of the defendant, Dennis Saxton, to the bill and the amended bill, now filed in lieu of the answers heretofore interposed for him, which have been lost from the papers, and are not to be found, to have the same effect in all respects as the said original answers, and to be considered as if filed at the time when they were respectively filed. And also to have the effect of a cross-bill.

Respondent does not admit but denies that the plaintiffs, or any of them, have, or ever had, title to the two lots or tract of land de-
155 scribed in the bill or either of them, or any interest therein, or that their ancestor ever had any such title or interest. Neither does respondent admit the conveyance set out in the bill and amended bill, nor the wills, nor the probate of the same, nor the heirship of the plaintiffs, or any of them, nor that the plaintiffs are the persons they describe themselves, nor any other fact alleged in the bill, touching the title of the plaintiffs, or the manner in which they acquired the same, but each and every one of the facts respondent hereby denies.

Respondent, further answering, states and shows that the facts connected with the purchase of the said two lots or tracts of land by his co-defendant Sherry are, as he is informed, correctly stated in the answer of the said Sherry, herein filed on the 17th day of June, 1867, and he here adopts the said answer and reiterates the statements and allegations thereof in answer to so much of the bill and amended bill as they apply to, and he prays the same benefit thereof as if verbally
156 incorporated herein. The facts antecedent to and connected with the said purchases of the said two lots and tracts of land by the said Sherry are correctly set out, as he is informed, in the answer of the said Sherry; and respondent also here adopts the said answer and reiterates the statements and allegations of it in answer to so much of the bill and amended bill as has reference thereto, and he prays the same benefit thereof as if the same were here verbally incorporated.

Respondent, further answering, states that on the day of , 1865, the defendant Sherry, being in the possession of the said lot No. 31, containing $6\frac{74}{100}$ acres of land, and claiming to be the owner thereof in fee-simple absolute, and representing his title to be indefeasible, bargained and sold the said lot to respondent at and for the price and consideration of fifteen hundred dollars, of which sum respondent then paid him five hundred dollars in cash, and subsequently, on the 19th
157 day of September, 1865, respondent paid the said Sherry one thousand dollars, the residue of the said purchase-money, and took from him a deed in fee-simple, conveying him the said lot (described, however, by mistake as lot No. 39 instead of lot No. 31, but the metes

and bounds are properly stated), together with covenants of seizin, against incumbrances, of warranty of title against all lawful claims, and of his right to convey. The said deed was afterwards duly acknowledged, and is of record in the office of the register of Shelby County, in book No. 55, part I, pages 559–561, and the original is held subject to the order of the court.

After his said purchase respondent entered into and upon said land, and since then he has had possession of the same, claiming by title in fee-simple, has paid the taxes thereon, and has made permanent and valuable improvements thereon, consisting of fences, a dwelling house in which he and his family reside, a framed kitchen, a smoke-house, a chicken-house, a cow-stable, a horse-stable, a corn-crib, a bridge
158 across a branch, two cisterns, two wells, a servants' house, and other buildings, including a feed-house, all at a cost of more than five thousand four hundred dollars. All the said improvements yet remain upon the said land and are good and substantial. When respondent purchased the said lot the records of the county of Shelby were not in the county, having been taken South by those in rebellion against the Government of the United States, in the year 1862, and not then returned; hence respondent had no means of inquiring into the title to the said lot. They were not returned till a long time afterwards.

Respondent had the utmost confidence in his co-defendent; Sherry represented his title to be perfect to the lot, and he neither knew nor was informed of any adverse claim of title. Besides respondent is unable to read or write, and he was informed and believed that a title coming from the Government of the United States by a sale for taxes, as Sherry informed respondent his title did, was the best possible
159 title he could acquire; and relying upon his title, and having no knowledge or notice of any defect in it, respondent in good faith made the improvements aforesaid, not doubting for a moment that he was upon his own ground.

Respondent did not know until his deposition was taken in this cause that the lot he had so purchased of the said Sherry was involved in the suit. He had purchased another lot, as will be hereafter stated, and he knew that lot was involved. But his co-defendent, Sherry, always informed him, and the mistake in the number of the lot appearing in his deed, caused him to believe that the lot aforesaid, to wit, the one on which his improvements are situated, had never been sued for; consequently respondent made no answer originally to the bill, but filed only a disclaimer of title to lot thirty-two (32). And he in fact made the improvements aforesaid in entire ignorance of the fact that this suit was pending for the said lot thirty-one (31).

Further answering, respondent says he purchased of the said
160 Sherry lot 32, mentioned in the bill, amended bill, for the agreed price of two thousand dollars ($2,000), and gave the said Sherry his three promissory notes for the said price, which said notes the said Sherry transferred without consideration, as he is informed and believes, to one John B. Rodgers, who yet has them unpaid; but by agreement between the said Sherry and respondent, the said sale and purchase have been cancelled and set aside, and the said Sherry became bound and agreed to return respondent his said notes, which, however, he has never yet done.

After his purchase of the said lot 32, respondent was in possession of it until the said sale and purchase *d* was so cancelled, and after the cancellation he was in possession for some time as the tenant of the said

Sherry, but for several years he has had nothing to do with the said lot, and has asserted no claim whatever to it. He paid a considerable amount of taxes on the said lot, and the amount of his payment he is entitled to have repaid by the party who may turn out to be the
161 lawful owner of the said lot. In other respects, and when the same is not inconsistent with this answer, respondent hereby adopts the answer before referred to of his co-defendant, Sherry.

And this respondent demurs to the bill of complainants for want of equity in its face, and because they have an adequate remedy at law, and because the several allegations of the bill raise objections to respondent's title, and the title of the said Sherry, which this court is not competent to pass upon.

And having fully answered, respondent prays that this his answer may be taken as a cross-bill against the plaintiffs and the said Sherry, that he may have proper and suitable relief against each of them, and that he may be dismissed hence, &c.

W. M. RANDOLPH,
Sol. for D. Saxton.

Dennis Saxton, respondent in the foregoing answer, makes oath that the statements of the same, so far as made upon his own knowl-
162 edge, are true, and so far as made upon information and belief he believes the same to be true.

Subscribed and sworn to before me this day of August, 1871.

It is agreed that the foregoing answer and cross-bill may be taken as a substitute for the original answers and cross-bill which have been lost from the files, and that the said answer and cross-bill shall have the same effect in all respects as the said original.

Aug. 23d, 1871.

HEISKELL, SCOTT & HEISKELL,
SMITH & JEFFERSON,
Sol's Complainants.

WM. M. RANDOLPH,
For Dennis Saxton.

Filed 28th day of August, 1871.

E. A. COLE,
C. & M.

Agreement of counsel.

In the chancery court.

ANDREW MCKINLEY & OTHERS }
vs.
163 PATRICK SHERRY AND OTHERS. }

In this cause it is agreed that the assessment list of 5th civil district of Shelby County for the year 1860, embracing that portion of the said district in which the property in controversy in this suit is situated, may be produced, and any part or parts of the same may be read in evidence by either party, subject only to objections for relevancy and competency.

Sept. 27th, 1869.

W. M. RANDOLPH,
Sol. for Def'ts.
HEISKELL, SCOTT & HEISKELL,
Sol's for Complainants.

The above agreement shall apply to the case of Jos. Graham vs. Patrick Sherry, N. R. D. 742, H. P. 1,304, in this court.
Sept. 27th, 1869.

WM. M. RANDOLPH,
Sol's for Def'ts.

Also the proof taken or agreed to be read in McKinley vs. Sherry, No. 1,890, shall be read in above case of Graham vs. Sherry. Objections to relevancy and competency reserved.

164 W. M. RANDOLPH,
Sol. for Def'ts.
HEISKELL, SCOTT & HASKELL,
Sol's for Compl'ts.

Filed March 21st, 1872.

E. A. COLE,
Clerk & Master.

Agreement of counsel.

In the chancery court.

ANDREW MCKINLEY & OTHERS
vs.
PATRICK SHERRY & OTHERS.

In the above cause it is agreed that the additional answer and cross bill of the defendant Dennis Saxton may be filed without a formal application to the chancellor for leave, with the like effect as if such leave were obtained. And the plaintiffs agree to answer the said cross-bill without the service of process. And the filing of said answer
165 and cross-bill is not to delay the hearing of the same.
Sept. 27th, 1869.

W. M. RANDOLPH,
Sol. for Def'ts.
HEISKELL, SCOTT & HEISKELL,
Sol's for Compl'ts.
SMITH & JEFFERSON.

Filed March 21st, 1872.

E. A. COLE.
C. & M.

Deposition of Moses R. Parrish.—Filed January 12th, 1870.

The deposition of Moses Parrish, taken by consent of the solicitors of both parties, on this the 30th day of Sept., 1869, at the law-office of Beecher & Belcher, Irving block, in Memphis, subject to exceptions only for incompetency.

Interrogatories by compl't:

1st. State your age, residence, and business at the present time.
166 Ans. I am 33 years; live in Bolivar, Tenn.; am editor and proprietor of a newspaper, and a practical printer by trade.

2d int. State where you lived in the months of May and June, 1854, and in what and whose employment you were engaged, and what capacity.

Ans. I lived during these months in the city of Memphis; was in the employment of Ja's B. Bingham, the editor and proprietor of the Mem-

phis Bulletin, and under his employment I was the foreman of the job-office of the said Bulletin office.

3d int. What were your duties in the position?

Ans. All work done in the job-office was done under my own immediate supervision. The original or written matter for the work was brought to me; I directed the style and shape in which the work should be done, and read the proof of the job-work, and generally had the full control of this department of the office, only subject to the con-
167 trol of M'r Bingham when he chose to exercise it; I was thoroughly familiar with all that was done in this department while I was foreman.

4th int. Look at the paper which is here shown you and which is marked "Exhibit A to the deposition of E. P. Ferry," mark it and make it an exhibit to this deposition, and state if you know what it is or what it purports to be, and state generally all you know in regard to the publication of this paper, what you had to do with it, when the original drafts of said paper were first seen by you, and under what circumstances. State how long you were ready getting their work ready for the press; when it was issued, and if issued on the day it bears date; and, if not, state when it was. Answer fully in response to this question all you may know about this paper.

Ans. I have examined the paper and here mark it "Exhibit A" to my deposition and sign my name to it. I know what it purports
168 to be and am familiar with the history of its publication. It was printed under my own supervision in the job-office of the Memphis Bulletin Office, of which I was foreman, as I have before stated, in the month of May, 1864. The circumstances connected with it, which I am familiar from having attended to the whole matter on the part of the Bulletin job-office in the execution of the work, which are these:

Some three or four days before the 19th day of May, 1864, the draft for the work was handed into the Bulletin office; the draft was not complete when it was first handed into the Bulletin office, and I did not enter it upon the books, but commenced getting ready for the work by distributing type. On the 19th day of May, 1864, I was ready to go to work on the job, and on that day I entered job on the books of the job-office, which were kept by myself, and commenced work on it. My instructions were to push the work through and get the papers out
169 as soon as possible. I put the whole available force of the job-office at work on it, and worked day and nearly the whole of several nights upon it. We were occupied from five to seven days in getting the type set and the forms ready for impression. I cannot recollect distinctly as to the very date on which the first impression was made and issued, but as I am certain it was from five to seven days from the 19th May, 1864, it must have been between the 22d and 24th May, 1864, when the paper which was printed as a supplement to the Memphis Bulletin was printed. It was dated as follows: The first 500 copies were dated back to the 14th May, 1864, the next to the 21st May, 1864, and the others were dated 28th of May, 1864, and 4th June, 1864, although all in fact printed at the same time; the first copies (of which Exhibit A is one) were dated back between 8 and 10 days, and though they were issued as bearing the date of 14th May, 1864, they were not in
170 fact printed or issued until from seven or eight to ten days after this, if not more. I am certain of the foregoing statement. I at one time entertained an idea of purchasing a lot at the sales, but was so well aware of the facts in regard to the publication of the notices for sale, that that alone made me refrain. To assure myself of my recollec-

tion of this matter, I have this day examined the books of the job-office of the Bulletin office which were kept by myself, and I find the original entry of the work entered upon the said books as on the 17th day of May, 1864, which, as I have before stated, was the day we commenced work on the job.

5th int. State now all you may know in regard to how this paper was circulated, and when, and how many copies of it.

Ans. Within a small number, more or less, 2,000; the intention was to have 2,000 copies printed. There were four dates, and as they
171 were needed I sent them down into the press-room to be folded with the morning Bulletin paper. They were all sent out within a few days of each other (I mean all that were circulated), as from the time of the printing of to the date of the sale advertised there were not four weeks to circulate them in. There were a good many copies of the paper left in the office which were never used. There was no regularity in sending the papers out weekly; all that were circulated were sent along with the Bulletin morning paper within a period of some fourteen or fifteen days.

6th int. What was the average daily circulation of the Memphis Bulletin, and what was the character of the circulation of the paper?

Ans. The circulation of this paper was a daily morning circulation. There was at that time no weekly paper published. The daily morning circulation was to my knowledge that of between two thousand and twenty five hundred papers daily.

172 And further deponent saith not.

M. R. PARRISH.

Sub. & sworn to before me, Sept. 30, 1867.

ISAAC MORRISON.
U. S. Comm'r.

Exhibit A to M. R. Parrish's deposition.

[Memphis Morning Bulletin Supplement, June 4th, 1864.]

UNITED STATES DIRECT TAX SALE.

UNITED STATES OF AMERICA,
District of Tennessee:

OFFICE OF U. S. DIRECT TAX COMM'R,
Memphis, Tennessee, May 14th, 1864.

Notice is hereby given that the several tracts or lots of land situated in the 5th, 14th, and 15th civil districts of county of Shelby, in the State of Tennessee, hereinafter described, have been forfeited to
173 the United States, by reason of the non-payment of the direct taxes charged thereon, under the act entitled "An act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes," approved August 5th, 1861, and an act entitled, "An act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes," approved June 7th, 1862, and that the same will be sold in pursuance of the act last mentioned and the act amendatory thereto, approved Feb'y 6th, 1863, at public auction, on the 13th of June, 1864, at said commissioner's office, in Jefferson Block, in the city of Memphis, county and State aforesaid, to the highest bidder, for a sum not less than the taxes, penalty, interest, and costs.

Said sale will commence at 9 o'clock a. m. on Monday, the 13th day of June next, and continue from day to day until all of said lands and lots, not redeemed from forfeiture, as provided in said amendatory act, are sold, or notice of adjournment of sale is given.

[NOTE.—The different words abbreviated in the following list
174 are designated as follows: block, b., blc., or blk.; feet, ft.; corner, cor.; street, st.; avenue, av.; part, pt.; county lot, c. l.; subdivision, sub. and sub. div.; estate, est.; addition, add.; north, n.; east, e.; south, s.; west, w. The names of the parties at the beginning of descriptions signify the owners of the property in 1860, according to the county collector's book of that year. The figures with x between express size in feet.]

The following is a description of said lands, forfeited as aforesaid, together with the amount of the quota of said tax and penalty charged upon each of said tracts or lots of land, respectively:

	Valuation.	Tax.	Penalty.
Patton, R. M., part Weakley grant, lot 31, $6\frac{84}{100}$ acres...	$2,000	$7 00	$3 50

Transcript.

STATE OF TENNESSEE:

175 At a court of chancery began and held at the court-house in the town of Franklin, for the district composed of the county of Williamson, on the first Monday, it being the 3d day of April, 1848, presiding, the honorable Terry H. Cahal, chancellor, &c., the following proceedings were had, to wit:

NARCISSA HICKMAN
vs.
LETITIA E. BRAHAN ET AL.

In this cause the following entries appear on the rule docket, to wit:

O.—Bill filed 29th September, 1845, spa. and copies issued 1st October 1845, and executed Oct. 18th, 1845.

It appearing by aff't that the defendants are minors and have no general guardian, it is ordered that Daniel Trigg be appointed their guardian ad litum, and that he answer the compl't's bill for them.

Ans. filed 18th of October, 1845. Oct. Rules, 1845. Set for hearing by consent. Sci. fa. issued March, 1846, for Robert W. May, N. and Sarah J. Brown, and executed. Sup. bill filed and petition filed
176 29th May, 1845. Answer of John L. Brown, administrator, filed 3d June, 1846.

At the October term, 1845, the following order was made in the cause, to wit:

Be it remembered that on this 21st day of October, 1845, this cause was heard before the chancellor upon bill, answer, and replication by consent of parties, when it appeared to the court that about the first of the year 1845 one Robert Weakley died in Davidson County intestate, leaving a large real and personal estate, consisting in part of lands lying in various counties in the State of Tennessee, and especially of a large tract of land lying in Davidson County, near Nashville, and also a number of slaves, and leaving him surviving as his sole heirs and distribu-

tees the complainants and defendants in this cause, and the complainants having made application to this court by said bill for the sale of said real estate and slaves; but the court not being satisfied whether it would be for the interest of the defendants, who are minors, or
177 whether it is necessary and proper that such sale should be made for the purpose of division, thereupon refers it to the clerk and master of this court to hear proof and report immediately in regard to the above matter, 'till the coming in which report all other matters are reserved.

And at the same term last aforesaid the following decree was made in this cause, to wit:

Be it remembered that on this 29th day of October, 1845, this cause was heard further before the chancellor upon the report of the clerk and master, which is in the words and figures following, to wit:

To the honorable the chancellor of the middle division of the State of Tennessee, holding the chancery court at Franklin:

The subscriber, clerk & master, to whom the above cause stands referred by a decree made at the present term, with directions to take proof and report whether it is for the interest of all concerned that a sale of the real estate and slaves be ordered, respectively reports
178 that he has taken the depositions Ch. Lanier, John Nichols, Boyd McNairy, Edwin H. Childress, and Nathaniel McNairy, herewith filed. He finds it would be for the interests of the heirs of Robert Weakley that are of full age that sale be made, as there is no mode by which the value of real estate and negroes can so well be ascertained as by an open and fair sale; and he further finds from the above depositions that it would be manifestly for the interest and advantage of the minor heirs that a sale be made.

All of which is respectfully submitted.

Oct. 27th, 1845.

BENJ. LITTON, *C. & M.*

Which report, not being excepted to, is in all things confirmed, and it is therefore ordered, adjudged, and decreed that said real estate and slaves of the said Robert Weakley be sold for the purpose of division, and as being for the advantage of the minors.

And it is further ordered that for the sale of the lands and other real estate lying out of the county of Davidson, Robert L. Weakley, jr.,
179 be appointed commissioner, and that having advertised the time and place of his sales in some newspaper of Nashville, at least thirty days previous thereto, he sell said lands on a credit of one, two, and three years, without interest, taking from the purchasers notes or bonds, with good personal security, and retaining a lien on the land as further security for the purchase-money.

And it is further ordered that the clerk and master of this court sell said tract of land and other real property in Davidson County on the same credit as above, dividing, if he may think it expedient, said tract into a number of parcels to suit purchasers.

And it is further ordered that the said clerk and master also sell said slaves on a credit of six months, and that his sales be made on the public square in Nashville, after thirty days' public notice in some newspaper of Nashville.

It is further ordered that said clerk and master take good personal security from the purchasers, and in case of the land he retain the title as a further security.

180 And it is further ordered that the commissioners make their reports respectively to this court at next term, 'till when all other matters are reserved.

At the April term, 1846, the following order was made in this cause, to wit:

It is ordered by the court that Robert W. Brown be appointed guardian ad litem for the minors, Mary Narcissa Brown and Sarah Jane Brown, children of Jane B. Brown, deceased.

And at the term last aforesaid the following suggestion was made in this cause, to wit: The death of Ann McCree is suggested to the court, and that she died leaving no children.

At the last term last aforesaid the following decree was made in this cause, to wit:

The clerk and master and the commissioner appointed at a previous term of this court made report in the words and figures following, to wit:

MARCH 28, 1846.

To the honorable the chancellor of the middle division of the State of Tennessee, holding the chancery court at Franklin:

181 The undersigned commissioner respectfully reports that in pursuance of a decretal order made in the above cause at the October term, 1845, he did, on the 2d day of March, 1846, after having given more than forty days' notice of the time and place of sale in the Nashville Union, a newspaper published in Nashville, and the Memphis Appeal, a newspaper published in Memphis, expose to sale upon the premises, and upon the terms directed by the decree, the following lots or parcels of land adjoining the town of Memphis, a plat of which is herewith filed, styled "Lots adjacent to Memphis belonging to the heirs of Robert Weakley, esq.," marked "A," and made part of this report. Said lots or parcels of land were sold according to the divisions as represented in said plat, when and where the same were fairly struck off to the persons hereinafter named, and at and for the following sums, to wit:

(All of descriptions of said lots in the report of the commissioner are omitted—except the Nos. 31 and 32, which are in suit—by the
182 clerk in this transcript, as they are not necessary in the cause.)

Lot No. 31. Beginning at a stake on the Randolph and Raleigh road, the northeast corner of lot No. 29; thence west 1,010 feet, crossing a bayou, to a stake; thence north 800 feet to a stake; thence east 700 feet to said road; thence with said road southeast to the beginning, containing $6\frac{54}{100}$ acres, was struck off to Henry A. Bragg, at $37.30 per acre, making $256.50.

Lot No. 32. Beginning on the new road at a stake, the northwest corner of lot No. 30; thence east 742 feet to a stake; thence north 800 feet to a stake; thence west 903 feet to a stake on the new road; thence with said road 810 feet to the beginning, containing $6\frac{55}{100}$ acres, was struck off to Henry A. Bragg, at $50 per acre, making $329.00

In compliance with the terms of the decree, your commissioner has required the purchasers to execute their notes for the following sums, and which are held subject to the order of the honorable court,
183 and also retained lien upon the several parcels of land and town lots sold, as aforesaid, further to secure the payment of the purchase money, viz, property in Shelby County.

Henry A. Bragg,	12 months	$195 17
Same,	2 years	$195 17
Same,	3 years	$195 17
		$585 50

(The balance of said report is omitted in this transcript as not being necessary evidence in this cause.—CLERK.)

At the April term, 1846, the following decree was made in this cause, to wit:

It is ordered that Robert W. Brown, appointed general guardian by the county court of Davidson, on the first Monday in June, instant, for his sister Mary Narcissa Brown, and Sarah Jane Brown, be admitted to appear in this court for them as their guardian; and that John L. Brown, who was appointed administrator of his deceased wife, Jane B.
184 Brown, at the last term of said county court, be made a party to this suit in that capacity.

And this cause came on to be further heard upon the reports made by the clerk and master, and the commissioner, and the supplementary bill filed by Robert W. Brown, Mary Narcissa Brown, and Sarah Jane Brown, and the answer thereto by John L. Brown, administrator of Jane B. Brown, deceased; and this court order, adjudge, and decree that the reports of the clerk and master, and the commissioner be confirmed, and that the clerk and master execute to the several purchasers of the said estate deeds therefor, retaining a lien thereon for the purchase money; and that the negroes purchased by M'r's Jane Brown, amounting to the sum of $4,145 *dollars*, be settled upon her children, Robert W. Brown, Mary Narcissa Brown, and Sarah Jane Brown, the mother in her life-time having prayed for a settlement, and the same being asked for by the children in the supplemental bill; and it is referred to the clerk and master to inquire and report at the next
185 term whether any other settlement should be made upon said children of said Jane B. Brown out of the personal estate or their father's interest in the real estate.

And it is further ordered that the proceeds [of the real estate be kept separately from the proceeds]* of the personal estate until the further order of this court. And the clerk will make his report to the next term whether and how the notes taken for the personal and real estate should be divided among the heirs and distributees.

And it appearing to the court that a compromise had been made among the heirs and distributees of the estate of Robert Weakley, in the words and figures following:

Know all men by these presents that we, Robert L. Weakley, John L. Brown, Narcissa Hickman, Robert W. Brahan, R. M. Patton, Mary N. Coffee, John C. Brahan, W. F. McCrea, and R. M. Patton, guardian of L. E. and Thomas F. Brahan, are held and firmly bound to each other, collectively and individually, in the sum of five thousand dollars, for the payment of which well and truly we bind ourselves, our heirs, &c.
186 Given under our hands and seals this 9th day of April, A. D. 1845.

The conditions of the above bond are such that whereas the above-bound parties are the legal heirs of the late Robert Weakley, deceased, who departed this life, as they believe, leaving no will, and they being desirous in the spirit of compromise and concession to close his estate

* In pencil.—PRINTER.

on the most equitable terms, do hereby agree that the said Robert L. Weakley be released from all his liabilities to said estate, amounting in all to about twenty thousand dollars, on condition that he execute to the heirs of the late John Brahan, deceased, his promissory note for the sum of five thousand dollars, to be paid out of his distributive interest in said estate; and the said John L. Brown is also released from all his liabilities to said estate, consisting of notes, &c., in all amounting to about eleven thousand dollars, on condition that he execute promissory note for the sum of two thousand seven hundred and fifty
187 dollars, payable to the heirs of John Brahan, deceased, out of his distributive interest in said estate.

This being done, it is agreed by all the parties that the said R. L. Weakley, Narcissa Hickman, John L. Brown, and the heirs of John Brahan, dec'd, to wit: R. W. Brahan, R. M. Patton, M. N. Coffee, John C. Brahan, M. F. Rea, L. E. Brahan, and Thomas F. Brahan, *and* are hereby equal distributees in all the effects, both personal and real, possessed by our late father and friend at the time of his death, thereby relinquishing and making void all advancements made by or claims due to said estate in any way by said heirs or legatees.

It is further agreed that R. L. Weakley and R. M. Patton become joint administrators of said estate, and that they proceed, under the counsel and advice of E. H. and A. Ewing, esqs., with all reasonable dispatch, to adjust, dispose of, and finally settle said estate.

It is, however, agreed and understood that the 260 acres of land,
188 more or less, at present occupied by the said Narcissa Hickman, and also the said 918 acres of land at present and for many years occupied by the said R. L. Weakley, as well as the negroes owned by and in her possession, shall not be considered as any part of said estate, but all the other legatees will hereafter make such quitclaim conveyance to them respectively as may be desired.

It is also agreed that Robert L. Weakley be allowed the one thousand acres of land in Obion for which he holds his father's bond.

Given under our hands and seals the day and date above written.

R. L. WEAKLEY. [SEAL.]
NARCISSA HICKMAN. [SEAL.]
R. M. PATTON. [SEAL.]
JOHN L. BROWN. [SEAL.]
JOHN C. BRAHAN,
By his att'y in fact, R. M. PATTON.
M. N. COFFEE. [SEAL.]
R. W. BRAHAN. [SEAL.]
R. M. PATTON, [SEAL.]
Guardian for L. E. and T. F. Brahan.
JANE B. BROWN. [SEAL.]

It is ordered, adjudged, and decreed that said agreement of compromise be confirmed and established, and the clerk will also inquire
189 and report to the next term upon the real estate that descended to Ann E. McCrea, who has died since the commencement of this suit, has desolved, and whether administration has been taken out on her estate, and the costs of this suit will be paid out of the funds in this cause, before a division of the notes, and all other matters are reserved until the coming in of the master's report and the further order of this court, and if the purchasers of the negroes, with bills of sale to be executed by the clerk and master, he is directed to executethe same, retaining the notes with good security until the further order of this court.

At the October term 1846, the following order was made in this cause, to wit:

It appearing to the court that W'm F. McCrea has taken out letters of administration upon the estate of Ann E. McCrea, one of the complainants in this cause, it is ordered that the suit be revived in the name of said W'm F. McCrea, administrator, &c., and stand in
190 the same plight and condition as it did at the death of said Ann E. McCrea.

And at the same term last aforesaid the following order was made in this cause, to wit:

This cause came on to be further heard this 20th November, 1846, when it appeared to the court that the clerk and master made his report in the words and figures following, to wit:

To the honorable the chancellor of the middle division of the State of Tennessee holding the chancery court at Franklin:

The subscriber, clerk and master, to whom the above cause stands referred by a decree made at the April term, 1846, with directions to report whether any other settlement (besides the negroes purchased) should be made upon the children of Mrs. Jane B. Brown out of the personal estate or their father's interest in the real estate, respectfully reports that of all the personal estate of which the clerk has any information (although there is no doubt others) consists of the pro-
191 ceeds of the sale of the negroes reported at the April term, 1846, and which amounted to $25,948.00. This being divided into four shares each would be $6,487.00. By the compromise made between the parties, confirmed by the court, John L. Brown was to pay to the heirs of Robert Brahan out of his distributive share $2,750.00, leaving $3,337,00. The negroes purchased by Mrs. Brown and settled upon her children by the court cost $4,145.00 leaving a deficiency of $408.00. After the payment of which, out of the other personal property (should there be any), if a surplus remains, the clerk would find that the same be settled upon the children of Mrs. Brown. The sale of the real estate as reported are as follows:

Sale of land by clerk in Davidson		$45,177 12
Lot on Water street		9,879 25
Sale of land by Commissioner Weakley:		
In Shelby	$19,806 33	
" Haywood	1,003 87	
" Maury	9,631 00	
" Rutherford	10,730 00	
		40,571 20
This sum of		$95,627 57
divided into four shares each would be		$23,906 89

192 The notes executed by R. L. Weakley and others for the land purchased for M'r's Brown amount to $17,204.53. As the clerk has much doubt as to the power to make a settlement out of the real estate (the same being cast upon John L. Brown and his rights vested by operation of law), he respectfully submits the matter to the court upon the statement above, as to the extent of his interest.

The clerk was directed to report whether and how the notes taken for the personal and real estate should be divided among the heirs and distributees. He reports that as to the sales of the personal estate there can be no difficulty in the division of the notes, as they are all

now due and can be collected without difficulty. He begs leave to state that Eli Napier has paid his note to the clerk, and which is held subject to the order of the court, amounting to $2,199. The clerk has not demanded payment of any of the notes, as there was no order made for their distribution; as to the notes for the sales of the real estate
193 there may be some difficulty in dividing the same, and which he believes can be obtained, should the court or a distribution by requiring the parties to the suit who have purchased over their share to execute notes for the difference between their shares and their purchases according to the terms of the sales.

The clerk and master was directed to inquire and report upon whom the real estate that descended to Ann E. McCrea has devolved, and whether administration has been taken out upon her estate. He reports that the only evidence he has before him consists of the deeds herewith filed, marked 1 and 2, and from which it will appear that on the 19th September, 1845, William F. McCrea and Ann Eliza McCrea conveyed to Robert Lush all the right, title, claim, and interest which they have in the real estate, both legal and equitable, of Robert Weakley, deceased, and specifying the same.

A commissioner to take the privy examination of M'r's McCrea, issued from the clerk of Davidson County court, directed to James Yarbrough, esq., who executed the same on that day, on the 22d September
194 1845, William F. McCrea acknowledged said deed, and on the 1st October, 1846, the same was registered in Davidson County, having been deposited or noted for registration on the 23d September, 1845.

On the 23d of September, 1845, Robert Lusk conveyed the same property to William F. McCrea, which deed was registered 1st October, 1846, in Davidson County.

Administration on the estate of the said Eliza F. McCrea has been granted by the county court of Davidson to William F. McCrea, as will appear by a copy of the letters of administration here filed, marked "No. 3, Oct. 3d, 1846," which not being excepted to, the same is in all things confirmed, and it is ordered, adjudged, and decreed that the clerk and master ascertain and report the amount due on the administration account from R. L. Weakley and R. M. Patton to the estate, and what has been received of the estate in the hands of the
195 administrators, by each of the distributees, and that the same be taken into account in the division hereafter to be made.

Secondly, that he pay, out of the proceeds of the personal estate that may be in the hands of the clerk and master or the administrators, the costs of this suit, and of the execution of this decree, and the solicitor's fee in this cause; that the balance of his personal estate be divided into four equal parts: one part to Narcissa Hickman; one to the children of Jane Brown; one to the children of Mrs. Brahan, and one part to Robert L. Weakley; and out of the part belonging to Robert L. Weakley the sum of five thousand dollars is to be paid to the distributees of Mrs. Brahan; and out of the part belonging to the distributees of Jane B. Brown and to John S. Brown the sum of two thousand seven hundred and fifty dollars is to be paid to the distributees and heirs of Mrs. Brahan; and if there is not sufficient personal estate to pay said sum, exclusive of what has been settled upon the children of Mrs.
196 Jane B. Brown, the balance due under compromise is to be paid out of the proceeds of the real estate which is allotted to the said John L. Brown and his children. And should there be more personal estate than sufficient to pay said sum, then the balance of said share of the personal estate is to be settled on the children of said Jane B.

Brown. And the proceeds of the real estate is also to be divided by the clerk and master into four equal shares by a division of the notes or some equal arrangement, assigning one share to Robert L. Weakley, *her* heirs and assigns; one share to Narcissa Hickman, her heirs and assigns; one share to John L. Brown for life, remainder to Robert Weakley Brown, Mary Narcissa Brown, and Sarah Jane Brown, their heirs and assigns; and one share to Jane L. Batton, William F. McCrea, Mary N. Coffee, John L. Brahan [Rob't W. Brahan & Lititia Brahan],* and Thomas F. Brahan, the two latter being infants, the share of the infants to be paid over to their guardian in Alabama, upon his
197 giving bond and security to account for the same received in Tennessee according to law. And the fee of John Reid, counsel for the two infants, is to be paid out of their share.

And it is further ordered that the clerk and master divide the notes among the heirs of Brahan, and also [among]* the heirs of Mrs. Brown, or report in what mode the division can be made, and in what manner the life estate of John L. Brown can be estimated, and all the heirs for the purchase money of the land are reserved until the purchase money is paid, and application may be made to this court for judgment upon the notes or bonds if necessary, and other pay, may apply to the court at the next term for further directions and for a modification of this decree, and the clerk will make his report to the next term of this court.

It is ordered by the court that the above-stated cause be continued, and the orders heretofore be renewed.

At the October term, 1847, the following order was made in this cause, to wit:

198 A. M. Hamner, the purchaser of seventeen feet of ground fronting on the public square in the town of Columbia, running back to an alley fifty-four feet, situated north and adjoining to the brick storehouse recently occupied by W. & J. A. Tucker, being a part of lot No. 16, and William W. Coleman, another purchaser of sixteen feet of said lot No. 16, fronting on Main West street, running back 78 feet, cornering on the southeast seventy-three feet from the corner of John F. Morgan [store, having assigned their bids and transferred their interest to John F. Morgan],* as appears by their assignment filed with the papers in this cause, it is ordered that upon payment of the notes given for the purchase money, the clerk and master shall make a deed to said John F. Morgan, in lieu of making the same to Hamner and Coleman.

And at the April term, 1848, the following order was made in this cause, to wit:

199 By consent of counsel, it is ordered by the court that this cause be transferred to the chancery court at Nashville.

Bill costs in the above cause: Clerk, William H. Hill, 1 order, 25; transcript, 13.09; taxing costs, 25—$15.59.

STATE OF TENNESSEE, *County of Davidson:*

The foregoing is a true and perfect transcript of a part of the proceeding had in the above cause, in the chancery court at Franklin, as the same appears of record in my office.

In testimony whereof I, Nathaniel Baxter, clerk and master of said court, hereto subscribed my name and affixed the seal of the court, at office in Nashville, this 10th day of November, A. D. 1870.

NATHANIEL BAXTER,
Clerk & Master.

* In pencil.—PRINTER.

NARCISSA HICKMAN ET AL.
vs.
LETITIA A. BRAHAN ET AL.

200 It is ordered that Robert W. Brown, appointed general guardian, by the county court of Davidson, on the first Monday in June, instead of his sisters, Mary Narcissa Brown and Sarah Jane Brown, be admitted to appear in this court for them, as their guardian, and that John L. Brown, who was appointed administrator of his deceased wife, Jane B. Brown, at the last term of the said county court, be made a party to this suit in that capacity.

And this cause came on to be further heard upon the reports made by the clerk and master and the commissioner, and the supplemental bill filed by Robert W. Brown, Mary Narcissa Brown, and Sarah Jane Brown, and the answer thereto by John L. Brown, the administrator of Jane B. Brown, deceased, and the court orders, adjudge, and decree that the report of the clerk and master and the commissioner be confirmed, and that the clerk and master execute to the several purchasers of
201 the said estate deeds therefor, reserving a lien thereon for the purchase-money, and that the negroes purchased from M'r's Jane Brown, amounting to the sum of four thousand one hundred and forty-five dollars, be settled upon her children, Robert W. Brown, Mary N. Brown, and Sarah J. Brown; the mother, in her life-time, having prayed for a settlement, and the same being asked for by the children in the supplemental bill; and it is referred to the clerk and master to inquire and report to the next term whether any other settlement should be made upon said children of said Jane B. Brown, out of the personal estate or their father's interest in the real estate.

And that it is further ordered that the proceeds of the real estate be kept separately from the proceeds of the personal estate, until the further order of this court, and the clerk will make his report to the next term, whether and how the notes taken for the personal and real estate should be divided among the heirs and distributees.

And it appearing to the court that a compromise had been made
202 among the heirs and distributees of the estate of Robert Weakley in the words and figures following:

Know all men by these presents, that we, Robert L. Weakley, John L. Brown, Jane B. Brown, Narcissa Hickman, Robert W. Brahan, R. M. Patton, Mary N. Coffee, John C. Brahan, W. H. McCrea, and R. M. Patton, guardian for L. E. and Thomas F. Brahan, are held and firmly bound to each other, collectively and individually, in the sum of five thousand dollars, for the payment of which, well and truly, we bind ourselves, our heirs, &c. Given under our hands and seals this 9th day of April, 1845.

The conditions of the above bond are such that whereas the above bound parties are the legal heirs of the late Robert Weakley, deceased, who departed this life, as they believe, leaving no will, and they being desirous, in the spirit of compromise and concession, to close his estate on the most equitable terms, do hereby agree that the said Robert
203 L. Weakley be released from all his liabilities to said estate, amounting in all to about twenty thousand dollars, on condition that he execute to the heirs of the late John Brahan, dec'd, his promissory note for the sum of five thousand dollars, to be paid out of his distributive interest in said estate. And the said John L. Brown is also released from all his liabilities to said estate, consisting of notes, &c., in all amounting to about eleven thousand dollars, on the condition he execute

promissory note for the sum of two thousand seven hundred and fifty dollars, payable to the heirs of John Brahan, deceased, out of his distributive interest in said estate.

This being done, it is agreed by all parties that the said R. L. Weakley, Narcissa Hickman, John L. Brown, and the hears of John Brahan, deceased, to wit: R. W. Brahan, R. M. Patton, M. N. Coffee, John C. Brahan, M. F. Rice, L. E. Brahan, and Thomas F. Brahan, be, and are hereby, equal distributees in all the effects, both personal and real, possessed by our late father and friend at the time of his death,
204 thereby relinquishing and making void all advancements made by or claims due to said estate in any way by said heirs or legatees.

It *it* further agreed that R. L. Weakley and R. M. Patton become joint administrators of said estate, and that they proceed under the counsel and advice of E. H. and A. Ewing, esq's, with all reasonable dispatch to adjust, dispose of, and finally settle said estate.

It is, however, agreed and understood that the two hundred and sixty acres of land, more or less, at present occupied by the said Narcissa Hickman, and also the same nine hundred and eighteen acres of land, at present and for many years occupied by the said R. L. Weakley, as well as the negroes owned by and in his possession, shall not be considered as any part of said estate, but all the other legatees will hereafter make such quitclaim conveyance to them respectively as may be desired.

It is also agreed that Robert L. Weakley be allowed the one
205 thousand acres of land in Obion for which he holds his father's bond.

Given under our hands and seals the day and date above written.

ROBERT L. WEAKLEY. [SEAL.]
NARCISSA HICKMAN. [SEAL.]
R. W. BRAHAN, [SEAL.]
By his att'y in fact, R. M. PATTON.
W. F. McCREA. [SEAL.]
R. M. PATTON, [SEAL.]
Guar. for L. E. & T. F. Brahan.

Attest:
E. W. HICKMAN,
ROBERT L. WEAKLEY, JR.,
W'M H. GRIZZARD

It is ordered, adjudged, and decreed that the said agreement of compromise be confirmed and established, and the clerk will also inquire and report to the next term upon whom the real estate that descended to Ann E. McCrea, who has died since the commencement of this suit, has devolved, and whether administration has been taken out on her estate. And the costs of this suit will be paid out of the funds in this cause before a division of the notes, and all other matters are
206 reserved until the coming in of the master's report and the further order of this court. And if the purchasers of the negroes wish bills of sale to be executed by the clerk and master, he is directed to execute the same, retaining the notes with good security until the further order of this court.

The above decree was rendered April term, 1846. And at October term, 1846, the following decree was rendered, to wit:

This cause came on to be further heard this 20th November, 1846,

when it appeared to the court that the clerk and master made his report in the words and figures following, to wit:

To the honorable the chancellor of the middle division of the State of Tennessee, holding the chancery court at Franklin:

The subscriber, clerk and master, to whom the above-stated cause stands referred by a decree made at the April term, 1846, with directions to report whether any other settlement (besides the negroes
207 purchased) should be made upon the children of M'r's Jane B. Brown out of the personal estate, or their father's interest in the real estate, respectfully reports that all the personal estate of which the clerk has any information (although there is no doubt other) consists of the proceeds of the sale of the negroes reported at the April term, 1840, and which amount to $25,948.00. This being divided into four shares, each would be $6,487.00. By the compromise made between the parties, and confirmed by the court, John L. Brown was to pay the heirs of Robert Brahan out of his distributive share $2,750.00, leaving 3,737.00. The negroes purchased for M'r's Brown and settled by the court upon her children cost $4,145.00, leaving a deficiency of $408.00. After the payment of which, out of the other personal property (should there
208 be any), if a surplus remains, the clerk would find that the same be settled on the children of M'r's Brown. The sales of the real estate, as reported, as follows:

Sale of land by clerk in Davidson		$45,177 12
Lots on Water street		$7,879 25
Sale of land by Commissioner Weakley:		
In Shelby	$19,806 33	
" Haywood	$1,003 87	
" Maury	$9,031 00	
" Rutherford	$10,934 00	
	$40,571 20	$95,627 57

This sum divided into four shares each would be $23,906.89.

The notes executed by R. L. Weakley and others for the land purchased for M'r's Brown amount to $17,204.53. As the clerk has much doubt as to the power to make a settlement out of the real estate (the same having been cast upon John L. Brown and his rights vested by operation of law) he respectfully submits the matter to the court upon the statement above as to the extent of his interest.

209 The clerk was directed to report whether and how the notes taken for the personal and real estate should be divided among the heirs and distributees. He reports that as to the sales of the personal estate there can be no difficulty in the division of the notes, as they are all now due and can be collected without difficulty. He begs leave to state that Eli Napier has paid his note to the clerk, which is held subject to the court, amounting to $2,199.00. The clerk has not demanded the payment of any of the notes, as there was no order made for their distribution; as to the notes for the sales of the real estate, there may be some difficulty in dividing the same, and which he believes can be obviated (should the court order a distribution) by requiring the parties to the suit who have purchased over their share to execute notes for the difference between their shares and their purchases, according to the terms of the sales.

The clerk and master was directed to inquire and report upon whom

the real estate that descended to Anna E. McCrea has devolved,
210 and whether administration had been taken out upon the estate.

He reports that the only evidence he has before him consists of the deeds herewith filed, marked 1 and 2, and from which it will appear that on 19th of September, 1845, W'm F. McCrae and Ann Eliza McCrea conveyed to Robert Lusk "all the right, title, claim, and interest which they have in the real estate, both legal and equitable, of Robert Weakley, deceased," and specifying the same.

A commission to take the privy examination of Tho's McCrea issued from the clerk of the Davidson County court, directed to James Yarhough, esq., who executed the same on that day. On 22d September, 1845, W. F. McKrea acknowledged said deed, and on 1st October, 1846, the same was registered in Davidson County, having been deposited or noted for registration on the 23d September, 1845.

On the 23d of September, 1845, Robert Lusk conveyed the same property to W'm F. McKee, which deed was registered 1st of October, 1846, in Davidson County. Administration upon the estate of the said
211 Eliza F. McKee has been granted by the county court of Davidson to William F. McKee, as will appear by a copy of the letters of administration here filed marked "No. 3."

All of which is respectfully submitted Oct. 3d, 1846.

BENJ. LITTON, *C. and M.*

Which now being excepted to as in all things confirmed, and it is ordered, adjudged, and decreed that the clerk and master ascertain and report the amount due on the administration account from R. L. Weakley and R. M. Patten to the estate, and what has been received of the estate in the hands of the administrators by each of the distributees, and that the same be taken into account in the division hereafter to be made.

Secondly. That he pay out of the proceeds of the personal estate that may be in the hands of the clerk and master, or the administrator, the costs of this suit, and of the execution of the decree, and the solicitor's fees in this cause.

That the balance of the personal estate be divided into four equal parts: one part to Narcissa Hickman, one to the children of Jane
212 B. Brown, one to the children of M'r's Brahan, and one part to Robert L. Weakley; amount of the part belonging to Robert L. Weakley. The sum of five thousand dollars is to be paid to the distributees and heirs of M'r's Brahan, and if there is not sufficient personal estate to pay said sum, exclusive of what has been settled upon the children of M'r's Jane Brown, the balance due under the compromise is to be paid out of the proceeds of the real estate which is allotted to the said John L. Brown and his children; and should there be more personal estate than sufficient to pay said sum, then the balance of said share of the personal estate is to be settled upon the children of the said Jane B. Brown, and the proceeds of the real estate is also to be divided by the clerk and master into four equal shares by a division of the notes, or some equal arrangement, assigning one share to Robert L. Weakley, his heirs and assigns; one share to Narcissa Hickman, her heirs and assigns; one share to John L. Brown for life; remainder to Robert Weakley Brown, Mary Narcissa Brown, and Sarah Jane Brown,
213 their heirs and assigns; and one share to Jane S. Patton, William F. McRea, Mary N. Coffee, John L. Brahan, Robert W. Brahan, Letitia E. Brahan, and Thomas F. Brahan, the two latter being infants, the shares of the infants to be paid over to their guardian in

Alabama, upon his giving bond and security to account for the sums received in Tennessee, according to law, and the fee of John Reid, counsel for the two infants, is to be paid out of their share.

And it is further ordered by the clerk and master divide the notes among the heirs of Braban and also among the heirs of Mrs. Brown, or report in what mode the division can be made and in what manner the life estate of John L. Brown can be estimated. And all the liens for the purchase-money of the land are reserved until the purchase-money is paid, and application may be made to this court for judgments upon the notes or bonds if necessary, and either party may apply to the court at the next term for further directions and for a modification of this decree, and the clerk will make his report to the next term of the
214 court.

I, W. E. Winstead, clerk and master of the chancery court of Williamson County, certify that the foregoing is a true and correct transcript of two decrees rendered in the above-stated cause on the days and years therein stated in the chancery court for the district, composed of the counties of Davidson and Williamson, as appears of record in my office.

Witness my hand and seal of office this 9th day of November, 1870.

W. E. WINSTEAD, *C. & M.*,
By M. P. G. WINSTEAD, *D. C. & M.*

Clerk's fee, $4.00.

Decree for possession of land.

ANDREW MCKINLEY AND OTHERS
vs.
PATRICK SHERRY, DENNIS SAXTON & OTHERS. } 1890. N. R. D.

215 Be it remembered that this cause came on for hearing on this day before the honorable R. J. Morgan, chancellor, on the bill, amended bill, and exhibits thereto, the answers of defendants, and cross-bill of defendant Dennis Saxton and answer thereto, and exhibits; and the proof in the cause, including the deposition of Moses Parish, taken in the case of Buck vs. Williams, and the exhibit thereto, read by consent of parties in this cause; and upon the documentary evidence on file, and the agreements of counsel on file in the cause. And upon hearing the cause the court is of opinion, and so decrees, that defendant, Patrick Sherry, acquired no title to the lands described in the pleadings by virtue of his alleged purchases, made at the alleged sale of said lands for direct taxes of the United States. But the court is of opinion, and so decrees, that said alleged sales were illegal and void, and did not divert the title of said lands out of complainants, nor communicate any title thereto to defendant, Patrick Sherry; and that defendant, Dennis Saxton, who purchased one of the lots from said
216 Patrick Sherry, acquired no title thereto by virtue of his purchase.

And the court is of opinion that the legal title to said lands is in complainants, and that they are entitled to the possession thereof, and to the rents and profits thereof since the possession has been withheld by defendants.

And the court is further of opinion that defendant, Dennis Saxton, is not entitled to any compensation for the improvements placed on the lot claimed and held by him, because it appears that said improvements were made since the filing of the original bill in this cause.

It is therefore ordered, adjudged, and decreed by the court that said tax sales were illegal and void, and that the certificate of purchase issued to defendant, Patrick Sherry, for said lands be cancelled and annulled, and also the deed from said Sherry to defendant Saxton; and that complainants be restored to the possession of said lands, and that writs of possession issue accordingly.

Said lands are thus described: situated in the county of Shelby
217 and State of Tennessee, near the city of Memphis, and known as lots 31 and 32 of the Weakley tract of land, containing each six and one half acres, more or less, being the property heretofore conveyed by Henry A. Bragg in moietie to John McKinley, deceased, and complainant, Robert M. Patton, and fully described in the deed from said Henry A. Bragg to said Robert M. Patton, which is on record in the register's office of Shelby County, in book No. 7, pages 4 and 5.

And it is further ordered, adjudged, and decreed by the court that this cause be referred to the master to take and state an account of the rents and profits of said lands since they came into the possession of defendants, Patrick Sherry and Dennis Saxton, fixing the rents and profits of each lot separately, and stating the amount received in account thereof, and the person receiving the same. Said defendants will be credited in said account for the State and county taxes paid by
them, and interest on the same; but not for the amount paid
218 at the alleged tax-sales for United States taxes. And if the taxes were paid in scrip or depreciated currency, the credit will be for the actual value of said scrips or currency at the time of the payment, and interest thereon. Said credit is only to be applied [as an offset]* to the rents and profits. Said report will be made to the next term of this court.

And it is further ordered, adjudged, and decreed by the court that defendant, Dennis Saxton, is not entitled to any compensation for the improvements put by him on the lot claimed and held by him. And his cross-bill seeking compensation for said improvements is hereby dismissed at his costs.

And said defendant, Sherry, will pay all the costs of this suit (and the defendant, Saxton, such only as have occurred on account of his being a party to the suit), for which execution may issue.

From which decree the said Dennis Saxton prays an appeal
219 to the next term of the supreme court to be held at Jackson, Tennessee, which is granted on condition that he enter into bond in the penalty of two hundred and fifty dollars, with security for costs, before the clerk and master, within twenty days from this date. And the said Patrick Sherry also prays a like appeal, which is likewise granted on the above condition.

But if an appeal is taken by said Dennis Saxton alone, it will only effect this decree in so far as it applies to him. In making the transcript of the record in case of an appeal the clerk will only copy so much of Exhibit A to Moses Parish's deposition (the newspaper) as gives the name and style and date of the paper, and the notice of sale immediately under said name and style, and the notes explaining the abbreviations, &c., and then so much of said newspaper as contains a description of the property in controversy in this cause, the assessed value
of the property, and the amount of the taxes, penalty, and costs
220 due thereon. And if an original newspaper containing the same notices as Exhibit A to said deposition can be procured, the clerk will make that a part of the transcript instead of a copy. And the

* In pencil.—PRINTER.

clerk will also only copy so much of the assessment-list of the 5th civil district of Shelby County for the year 1860, made evidence under agreement of counsel of September 27th, 1869, as contains a description of the lots in controversy. And if either of said lots is not mentioned in said assessment-list the clerk will so state it.

E. March 22d, 1872.

Appeal bond.—Filed 1st day of April, 1872.—E. A. Cole, C. & M.

We, Patrick Sherry, Dennis Saxton, and surety, acknowledge ourselves indebted to Andrew McKinley & al. in the sum of two
221 hundred & fifty dollars, to be void if the said Patrick Sherry et al., who have prayed for and obtained an appeal from a decree of the first chancery court of Shelby County, in a cause in which Andrew McKinley et al. complainants, and Patrick Sherry et al. are defendants, to the next term of the supreme court of Tennessee, for the district of West Tennessee, to be held at Jackson, commencing the first Monday in April, 1872, shall pay all such costs as shall be awarded against them by said supreme court.

This 28th day of March, 1872.

DENNIS SAXTON and PATRICK SHERRY, [SEAL.]
By RANDOLPH HAMMOND & JORDAN, *Sols.*
W. H. McKIRNANY, [SEAL.]

Surety owns lot and improvements in Memphis, near the Ohio depot Lots Nos. 16, 17, 18, 19, and 122, Hoffman's subdiv', worth at least $5,000.

R. J. BLACK, *D. C. & M.*

222 *Decree of the Supreme Court, September term, 1875.*

And now at, to wit, on the 8th day of October, 1875, being one of the days of the said September term of said court, the following decree was rendered in this cause, viz:

ANDREW MCKINLEY AND LUTHER T. THURSton as executors and trustees of the will of John McKinley, deceased; Ashley McKinley, Elizabeth A. McKinley, Anna C. McKinley, Mary C. McKinley, Crittenden McKinley, Andrew McKinley, jr., and Pope McKinley, minors under the age of twenty-one years, who sue by their next friend Andrew McKin-
223 ley, Mary Churchill, Mary Moss Churchill, a minor under the age of twenty-one years, who sues by her mother and next friend, Mary Churchill; Derick A. January and Julia his wife, and Robert M. Patton,
vs.
PATRICK SHERRY AND DENNIS SEXTON & others.

} ✱ 93. Shelby ch'y docket.

This cause was this day heard upon the transcript of the record from the first chancery court of Shelby County, and the separate appeals of the defendants, Patrick Sherry and Dennis Sexton, from the decree of the court below; and it appearing to the court that the title to the
224 lots in controversy relied upon by the defendants, Patrick Sherry and Dennis Sexton is based upon purchases made of the direct-tax

commissioners of the United States, at sales made by them at Memphis, in June, 1864, under and by virtue of the act of Congress entitled "An act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes," and the act amending the same; and that the said direct-tax commissioners in making the said sales did not follow the said acts of Congress in this, that the military authority of the United States was not established throughout the county of Shelby, wherein the said lots are situate, when they entered upon the discharge of the duties of their office, and made the said sales of the said lots, and therefore that the said sales were and are void.

225 And it further appearing that the complainants were lawfully seized and possessed of the said two lots at the time of the said sales, and that they have not since parted with their title, and that they are now entitled lawfully to the same, and that the said defendants, Patrick Sherry and Dennis Sexton, have no right to the possession thereof, it is therefore ordered, adjudged, and decreed that the decree of the court below appealed from be and the same is hereby affirmed; that the said sales for taxes and the certificates of purchase granted by the direct-tax commissioners to the defendant Sherry, and the deeds made by the defendant Sherry to the defendant Sexton, be cancelled, set aside, and held for naught; that the complainants be restored to the possession of the said property, to wit: Lots thirty-one (31) and

226 thirty-two (32) of the Weakley tract of land, part of the McLemore and Weakley grant in the fifteenth (15) civil district of the county of Shelby, near the city of Memphis, the first containing 6.84 acres of land, and the second 6.58 acres of land, and that a writ of possession issue accordingly.

And the cross-bill of the defendant, Dennis Sexton, is hereby dismissed, and he will pay the costs thereof, for which execution may issue; and the defendants, Patrick Sherry and Dennis Sexton, will pay the costs of this cause in this court, for which execution may issue against them and M. H. McKienary, their surety, on appeal bonds. The costs of the court below will be disposed of as directed by the decree of that court, and execution will issue therefor.

227, 228 And this cause is remanded to the court below for the purpose, and only for the purpose, of having the account of the rents and profits of the said lands taken and stated as directed in the decree hereby affirmed, which the court below will cause to be done in the manner directed in the said decree.

229 *Opinion by McFarland, Judge.*

ANDREW MCKINLEY & OTHERS
vs.
PATRICK SHERRY & OTHERS.

This case presents the same questions decided by this court at a former term in the case of Buck vs. Williams. Whether or not there be doubt as to the correctness of the reasons given for our conclusions in the opinion in that case, we think the same conclusions may be sustained upon a different ground.

The case turns upon the construction of the acts of Congress in reference to the sale of land for the collection of the direct tax in the insurrectionary States. The 6 sec. of the act of June 7, 1862, provides that the board of tax commissioners "shall enter upon the discharge of the duties of their office whenever the commanding general of the forces

230 of the United States entering into any such insurrectionary State or district shall have established the military authority of the United States throughout any parish or district or county of the same, and they shall open one or more offices for the transaction of business."

The act requires said board of commissioners to give the purchasers of the land a certificate of the sale, which certificate shall be received in all courts as prima facie evidence of the regularity and validity of the sale and the title of the purchaser.

The same section contains a subsequent proviso that said certificate shall only be effected as evidence of the regularity and validity of the sale by establishing the fact that said land was not subject to the tax, or that the taxes had been paid previous to the sale, or that the land had been redeemed.

231 One of the grounds upon which the sale is attacked is that the military authority of the United States had not been established throughout the county of Shelby when the sale took place, and the land was not then subject to sale according to the provisions of the act.

The argument in answer to this is that the land was forfeited to the U. States by the non-payment of the tax within the time limited according to sec. 4, and that the question whether the military authority of the United States had been established throughout the county at the time the commissioners assumed to act, is not a question for the courts upon proof, but was a question for the military or political power to determine, and that if the commanding general and the board of commissioners assumed the fact to be so, and based their action upon this assumption, the courts could but recognize and follow their

232 action; and further, that the title claimed under the certificate of sale could only be defeated by showing one of the three facts stated, that is, the land was not subject to the tax, or that the taxes had been paid or the land redeemed, and that to show that the land was not subject to the taxes means that it was exempt from the assessment, and proof upon the question of whether the military authority had been established throughout the county was not relevant.

We confess the force of this argument, and agree that the acts of Congress are subject to this construction; but it does not appear to us from anything in this record, either in the recitals of the certificate of sale or otherwise, that the board of commissioners or commanding general assumed the fact to be that the military authority of the United

233 States had been established throughout the county of Shelby, nor does the certificate of sale recite or show such a compliance with the acts of Congress as to require a sale. The certificate of sale shows simply a sale under the act of Congress in pursuance of notice.

We cannot infer from the mere fact that a sale was made that the commissioners assumed the existence of the state of facts making the sale necessary or that they had complied with the acts as to the mode of assessment when these facts are not recited in their certificate or otherwise. The record in fact indicates that the commissioners did not regard the military authority of the U. S. established throughout the county but proceeded upon the idea that the establishment of such authority over certain civil districts of the county would authorize

234 a sale of the land in those districts. This we think was not the meaning of the act. We do not think that it was intended that a certificate of sale should be conclusive and only to be defeated by proving that the land was exempt or that the taxes had been paid or the land redeemed, when it does not appear either from the certificate or

otherwise that the commissioners based their action upon the assumption of the existence of the state of facts which by the act of Congress authorized the sale. For if it should appear that the Commissioners announced to sell land entirely outside of the county or district held by the military and this fact appeared by their own certificate, it would certainly not do to hold such certificate to be the conclusive evidence of title contended for; and so where it does not in any manner
235 affirmatively appear that the commissioners assumed the facts to be as the law required, the certificate ought not to be conclusive evidence of title.

So that while we do not concede that the question as to whether the military authority of the U. States had or not been established throughout the county may not be enquired into as proof, we base our conclusions not so much upon the evidence in regard to the actual occupation of Shelby County as upon the ground that the commissioners did not so assume the fact to be. Upon this ground the decree of the chancellor will be affirmed with costs.

236 *Writ of error from Supreme Court of the United States.*

UNITED STATES OF AMERICA:

The President of the United States to the honorable the judges of the sapreme court of the State of Tennessee, sitting at Jackson for the western division of the State of Tennessee, greeting:

Because in the record and proceedings, and also in the rendition of the judgment or decree of a plea which is in the said supreme court of the State of Tennessee, sitting at Jackson for the western division of the State of Tennessee, before you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Andrew McKinley, of the city of New York, in the State of New York, and Luther L. Thurston, of the State of Ken-
237 tucky, executors and trustees of the last will and testament of John McKinley, deceased, Ashley McKinley, Elizabeth A. McKinley, Anna C. McKinley, Mary C. McKinley, Crittenden McKinley, Andrew McKinley, and Pope McKinley, of the said city of New York, minors under the age of twenty-one years, who sue by their next friend, Andrew McKinley, Mary Churchhill, of the city of Louisville, State of Kentucky, and Mary Moss Churchhill, of the same place, a minor under the age of twenty-one years, who sues by her mother and next friend, Mary Churchhill aforesaid, Julia January and her husband, Derick A. January, of the city of St. Louis, State of Missouri, and Robert Patton, of the State of Alabama, plaintiffs, and Patrick Sherry and Dennis Sexton, of the county of Shelby, State of Tennessee, defendants, a
238 manifest error hath happened to the great damage of the said Patrick Sherry and Dennis Sexton, as by their complaint appears: We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington on the 4th Monday of October, in the said Supreme Court to be then and there held; that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and accord-
239 ing to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 9th day of October, in the year of our Lord one thousand eight hundred and seventy-five.

[SEAL.] HORACE E. ANDREWS, *Clerk*,
By L. H. PILLSBURY, *D. C.*

Appeal bond.

PATRICK SHERRY ET AL., PL'FF IN ERROR,
vs.
ANDREW McKINLEY, EX'R, ET AL., DEF'TS IN error.

Know all men by these presents that we, Patrick Sherry and Dennis Sexton, as principals, and M. H. McKinary and
240 as sureties, are held and firmly bound unto Andrew McKinley, of the city of New York, and Luther T. Thurston, of the State of Kentucky, as executors and trustees of the last will and testament of John McKinley, deceased, Ashley McKinley, Elizabeth A. McKinley, Anna C. McKinley, Mary C. McKinley, Crittenden McKinley, Andrew McKinley, and Pope McKinley, of the city of New York; Mary Churchill and Mary Moss Churchill of Louisville, K'y; Julia January and her husband, Derick A. January, of S't Louis, Missouri; and Robert M. Patton, of the State of Alabama, in the sum of one thousand dollars, to be paid to the said obligees, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, execu-
241 tors, and administrators, firmly by these presents, sealed with our seals, and dated this ninth day of October, 1875.

Whereas the above-named Patrick Sherry and Dennis Sexton have prosecuted a writ of error to the Supreme Court of the United States to reverse a judgment and decree of the supreme court of the State of Tennessee sitting for the western division of the said State, at Jackson, in said State, in the above-entitled action:

Now, therefore, the condition of this obligation is such, that if the above-named Patrick Sherry and Dennis Sexton shall prosecute their said writ of error to effect, and answer all costs and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

[SEAL.] his DENNIS + SEXTON. mark.
[SEAL.] PATRICK SHERREY.
[SEAL.] By W. M. RANDOLPH, *His Att'y.*
[SEAL.] M. H. McKIENARY.

Signed, sealed, and delivered in my presence, and approved
242 Oct. 4th, 1875.
JOHN H. FREEMAN, *Clerk.*

Approved Oct. 9th, 1875.

A. O. P. NICHOLSON,
Chief Justice of Tennessee.

THE STATE OF TENNESSEE:

I, John H. Freeman, clerk supreme court of the State of Tennessee for the western division thereof, at Jackson, do hereby certify that the above and foregoing is a full, true, and perfect transcript of the record

and proceedings had in a certain cause lately determined in said court wherein Andrew McKinlay and others were complainants and Patrick Sherry and others were defendants, the same appearing of record in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at office in the city of Jackson, this the 24th
243 day of November, A. D. 1875, and of the Independence of the United States the 100th year.

[SEAL.] JOHN H. FREEMAN, *Clerk*,
By S. D. HAYS, *Dep. Clerk*.

244 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To Andrew McKinley and Luther T. Thurston, as executors and trustees of the will of John McKinley, deceased; Ashley McKinley, Elizabeth A. McKinley, Anna C. McKinley, Crittenden McKinley, Andrew McKinley, Pope McKinley, Mary Churchill, Mary Moss Churchill, Julia January and her husband, Derick A. January, and Robert M. Patten, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the 4th Monday of October, 1875, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Tennessee at Jackson, in the western division of said State, wherein you are defendants and Patrick Sherry and Dennis Sexton are plaintiffs in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the
245 Supreme Court of the United States, this the 9th day of October, in the year of our Lord one thousand eight hundred and seventy-five.

A. O. P. NICHOLSON,
Chief Justice of the Supreme Court of Tennessee.

I acknowledge, in behalf of the defendants in error, the receipt of a copy of this citation, and waive the notice required by law, and agree to appear and defend in the Supreme Court of the United States as if the said notice had been formally and duly given.

Oct. 12th, 1875.

J. B. HEISKELL,
Att'y for Def'ts in Error.

246 STATE OF TENNESSEE,
Madison County, ss:

William M. Randolph makes oath that on the 12th day of October, 1875, he served the foregoing citation on J. B. Heiskell, solicitor of record for the said defendants in error, by handing him a true copy thereof; also, that on the 11th day of October, 1875, and within ten days from the rendition of the judgment mentioned in the said citation and writ of error, he lodged a copy of the said writ of error and said citation for the said defendants in error in the clerk's office of the supreme court of the State of Tennessee for the western division at Jackson, in said

State, together with the writ of error and supersedeas bond required by law.

W. M. RANDOLPH.

Sworn to and subscribed before me this 12th day of October, 1875.

JNO. H. FREEMAN,
Cl'k Sup. C't Tenn.

(Indorsement on cover:) No. 116. Patrick Sherry and Dennis Sexton, plaintiff' in error, vs. Andrew McKinley & Luther T. Thurston, ex'ors & trustees of John McKinley, dec'd, Ashley McKinley, et al. Tennessee sup. court. Filed 1st May, 1876.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1878.

NO. 116.

PATRICK, SHERRY, AND DENNIS SEXTON, PLAINTIFFS IN ERROR,

v.

ANDREW McKINLEY ET AL., DEFENDANTS IN ERROR.

ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

BRIEF OF WM. M. RANDOLPH, OF COUNSEL FOR PLAINTIFFS IN ERROR.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1878.

NO. 116.

PATRICK, SHERRY, AND DENNIS SEXTON, PLAINTIFFS IN ERROR,

v.

ANDREW McKINLEY ET AL., DEFENDANTS IN ERROR.

ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

INDEX.

		PAGE.
(1)	Statement of Facts	1–5
(2)	Assignment of Errors	5
(3)	Argument—Sufficiency of description	6–8
(4)	Act of Congress of 7th June, 1862, constitutional	8
(5)	Objections to assessment	8
(6)	Effect of Certificate of Sale as proof of advertisement and of other facts	8–9
(7)	Military authority of U. S. established throughout district before sales to Sherry	9–11

BRIEF FOR PLAINTIFFS IN ERROR.

STATEMENT OF FACTS.

THE plaintiffs in the bill for the purposes of this case may be considered as the owners of the property in controversy prior to the sales thereof, at which the defendant Sherry bought, and still the owners unless their title was divested by the sales to Sherry.

The case therefore turns on the validity of the sales to Sherry.

Those sales were made at Memphis, the one on the 22d day of June, 1864, and the other on the 25th day of June, 1864, by the United States Direct Tax Commissioners for unpaid taxes under the act of Congress, entitled "An Act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes," and the acts amending the same, and certificates in due form of law of such sales were at the respective times granted by the Commissioners to Sherry.

Record, pp. 11, 12.

In the Chancery Court of Shelby county, where the case was first tried, it was decreed that Sherry acquired no title to the lands by his purchases, and that the sales were illegal and void and did not divest the title of the plaintiffs in the bill, nor communicate any title to Sherry. The court further decreed possession of the land to the plaintiffs, and the rents and profits since possession was taken under Sherry's purchases, and denied Sexton, who had bought one of the lots from Sherry, compensation for the improvements he had put on the lot.

Record, pp. 63–65.

In the Supreme Court it was decreed that as the Direct Tax Commissioners in making the sales to Sherry did not follow the acts of Congress in this, that the military authority of the United States was not established throughout the county of Shelby when they entered upon the discharge of the duties of their office and made the sales of the lots, the sales were void. The court therefore affirmed the decree of the Chancery Court, and canceled the certificates of purchase granted by the Tax Commissioners to Sherry and the deeds from Sherry to Sexton, and restored the possession of the property in controversy to the plaintiffs in the bill, and directed an account of the rents and profits which had been decreed by the court below.

Record, pp. 65, 66.

The opinion of the Supreme Court is in the record, by which it appears the court placed its decision solely and exclusively on the ground recited in the decree, to-wit: that the military authority of the United States had not been established throughout the county of Shelby when the Direct Tax Commissioners entered upon the discharge of the duties of their office and made the sales of the lots.

Record, pp. 66–68.

It may be this Court will consider no ground of objection to the sale except that on which the Supreme Court of Tennessee has based its decision. Evidently that court overruled all others, and there is no appeal or writ of error by the plaintiffs in the bill.

But, as the court may take a different view, I will succinctly state the other grounds and the facts having reference to them, on which the bill attacked the sales.

First. It is objected that lot 31 was assessed to and sold as the property of R. M. Patton, while he owned only an undivided half interest in it; and that lot 32 was described as being in the Manly tract, in which the plaintiffs in the bill had no interest.

Record, pp 2, 3.

The answer of Sherry claims his purchases embraced both the lots, and that after his purchases he entered into possession of them and still retained such possession.

Record, p. 9.

The descriptions in the certificates of purchase granted Sherry by the Commissioners are as follows:

"Lot thirty-two (32) part of Manly tract, six and fifty-eight one-hundredths (6 58-100) acres, assessed to heirs of McKinley in 1860, fifth civil district (country)," and

"Part Weakley grant, lot thirty one (31), six and eighty-four one-hundredths (6 84-100) acres, assessed to R. M. Patton in 1860, fifth civil district (country)."

Record, pp. 11, 12.

The lots 31 and 32 are so designated by numbers enclosed within lines for boundaries, on the plans which were made and put of record in the office of the Register of Shelby county of the sub-division of the tract, and on the published maps of Memphis, without any reference to the grant they are a part of, and their contents in acres are stated in figures. They are just outside the corporate limits of the city. Dr. Thomas, in his deposition, locates them on the map of Memphis made by Rucker, and refers to them as there designated by numbers, and says they are on the Weakley grant, by which, as he afterwards explains, he means the portion set apart to Weakley of the McLemore & Weakley grant, which is in the record, and numbered 17997.

Record, pp. 24, 21–22.

In the conveyance to Bragg, the vendor of Patton and McKinley respectively, the two lots are first described as "being lots No. 31 and 32 in the plan of lots adjacent to Memphis belonging to the heirs of Robert Weakley, Esq., and which plan is filed with the report of sale" in the suit mentioned in the conveyance, and then the boundaries of the lots respectively are particularly mentioned.

Record, p. 33.

The abstract of title, offered in evidence by the plaintiffs in the bill, designates the lots by their numbers.

Record, pp. 18–19.

And so of the report of sale to Bragg, made in the suit in chancery in which he made his purchase.

Record, p. 53.

And the deed from Bragg to Patton, and the title bond of Bragg to John McKinley, an abstract of which is in the record, contain like descriptions.

Record, pp. 39–40, 18–19.

In his deposition Governor Patton refers to the lots by the numbers, which he seemed to think a sufficient description.

Record, p. 39.

In answer to the question "Is it practicable to find and locate the two lots by the descriptions, lots 31 and 32—with a statement of the number of acres each contains," Dr. Thomas said, "I should suppose it was."

Record, p. 25.

There is no testimony to the contrary.

Dr. Thomas further testified he never heard of anyone of the name of Manly claiming any interest in, or ownership of lot 32. Never knew or heard of a grant being issued to anyone of the name of Manly, for said land. Never heard it called the Manly tract, or a part of the Manly tract. It has always been known as a part of the McLemore and Weakley tract, and as the Weakley division, or part that fell to Weakley in the division.

Record, p. 24.

He further testified he never heard of any such grant as the Weakley grant, though he had spoken of the Weakley grant in the previous part of his testimony.

Record, p. 25.

The Fifth Civil District of Shelby county in 1861 and also in 1864 was partly within the corporate limits of Memphis, and partly outside. The part outside was called "country," and the assessments of lots 31 and 32, in using the word "country," in parenthesis, have reference to that fact. The part outside on the north, where these two lots lie (see Dr. Thomas' deposition, Record, p. 23), was of comparatively small extent, and, as the published maps of the city and suburbs will show by reference to them, was mostly, if not entirely, subdivided into lots, which were designated on the maps by appropriate numbers or letters, and usually by a statement of their area.

Second. The bill claimed the acts of Congress under which the sales were made were unconstitutional.

Record, p. 3.

Third. It claimed that the assessments were excessive and unauthorized, because the Commissioners levied 35 cents on the hundred dollars worth of property, independent of the penalty, when by the act of Congress they were authorized to levy only $27\frac{3}{4}$ cents on the hundred dollars of value. There is no proof whatever of the truth of the facts here relied on, and the answers of Sherry and Sexton deny them.

Record, pp. 3, 11 and 47.

Fourth. It is objected that the Commissioners failed to advertise the sale of the property as required by the act of Congress in this, that though newspapers were published in Memphis, the advertisement was not in a newspaper, but on a separate sheet, styled a supplement, not attached to, nor a part of any newspaper, and not circulated with or sent to the subscribers or patrons of any newspaper, and while the daily circulation of the *Bulletin*, the newspaper to which the advertisement purported to be a supplement, was 5,000 or upwards, not more than 1,000 copies of the advertisement were issued or printed.

And a further objection is made to the advertisement, or rather to the sale under the advertisement, because the day specified in it for the sale was the 13th June, and the sales to Sherry were made on the 22d June and 25th June respectively. The position taken is that the sale could not be continued by the Commissioners from day to day, but must necessarily have been made on the day specified in the advertisement.

A further objection is that the advertisement was not published four weeks before the day of sale.

Record, pp. 3–4.

The facts on which these objections are based, if the court sees proper to refer to them, may be found in the deposition of Parrish.

Record, pp. 48–51.

It will be noticed that in their advertisement of the sale the Commissioners stated that the sale would commence on the 13th June and continue from day to day until all the land and lots advertised, not redeemed, were sold, or notice of the adjournment of the sale was given.

Record, p. 51.

In reference to the last point, to be noticed, that on which the decree of the Supreme Court of Tennessee was based, to-wit: That the military authority of the United States had not been established throughout the district when the Commissioners entered on the discharge of the duties of their office and made the sales to Sherry the testimony in the record discloses this state of facts:

West Tennessee, which is the portion of Tennessee west of the Tennessee River, from November, 1863, till 1865 was a military district having a designated area with a commanding general, and head-quarters at Memphis. In a military sense Shelby county and all West Tennessee were, during that time, in the possession and under the control of the Federal troops and authorities. There was no actual or continuous occupation of any portion of Shelby county by the rebels or persons in armed hostility to the Government during that time. But small bands of rebels, chiefly bushwhackers or guerillas, were continually on the picket lines and gave a good deal of trouble, and there were occasional irruptions into West Tennessee and Shelby county of the regular Confederate forces. There were no Federal military posts in Shelby county outside the picket lines around Memphis, except the posts along the line of the Memphis & Charleston Railroad, which extended at intervals as far as La Grange or Grand Junction. The picket lines around Memphis extended as far east as Buntyn's Station, on the Memphis & Charleston Railroad, as far as Wolf River on the north, and on the south as far as Cane Creek, with cavalry videttes as far as Nonconnah Creek. There was a camp at White's Station on the M. & C. R. R. Detachments of troops, generally with no more than three days rations, properly a reconnoisance, were sent out sometimes as often as three times a week into that portion of Shelby county between Raleigh, and the north-east and east lines of the county. It probably would not have been safe for the Direct Tax Commissioners in the year 1864 to have gone out ten miles from Memphis, except on the Memphis & Charleston Railroad, without a military escort.

Record, pp. 14–17.

It will be observed that the picket lines enclosed the city of Memphis and a mile or more outside its limits in every direction, and that each of the lots sold is within the lines.

ASSIGNMENT OF ERRORS.

The plaintiffs in error assign for error.

1. The Supreme Court of Tennessee should have held the sales to Sherry by the Direct Tax Commissioners valid, and effectual to pass the title to the lots to Sherry, and should so have decreed, and erred in holding the said sales illegal and void, and decreeing the cancellation of the same.

2. The Supreme Court of Tennessee erred in decreeing the possession of the lots in controversy to the plaintiffs in the bill, and in adjudging them entitled to rents and profits, and in directing an account to ascertain the same.

3. The Supreme Court of Tennessee erred in dismissing the cross-bill of the plaintiff in error, Sexton, and in refusing to decree him the value of the improvements placed by him on the lot he claimed to own by purchase from Sherry.

I.

~~The~~ lot 31 was not assessed or sold in the names of the plaintiffs in the bill, as owners, but only of Patton, one of them, and lot 32 was described in the assessment and certificate of sale, as being in the Manly tract, a tract in which the plaintiffs in the bill had no interest.

1. The act of Congress of 7th June, 1862, 12 Statutes at Large, p. 423, adopted the last assessment made under State authority next prior to 1st January, 1861, as the basis of the assessment and valuation to be made by the Direct Tax Commissioners, under the act of Congress, and after providing for ascertaining the quota of the tax chargable upon each tract or lot of land as so assessed, it declared such proportion a charge and lien on the lot or tract it was so fixed upon, without reference to the claimant or owner, of whom no particular notice seems to have been taken in any part of the proceedings, even down to the advertisement and sale.

This court has held the tax was specifically upon the land, and not upon the owner, and therefore the Government had no concern with the owner in collecting the tax.

Turner v. Smith, 14 Wallace, p. 553.

It is immaterial therefore in whose name the lot was assessed.

But in truth each of the lots was assessed in the name of one of the joint owners. Lot 31 was assessed to Patton, and lot 32 to McKinley's heirs. These assessments were correct as far as they went, and can be objected to only because they did not name *all* the owners. The statute does not require the assessment should name *all* the owners, and to do so in many cases would be impracticable. Besides, separate assessments of the lots respectively, one in the name of each of the joint owners, was calculated to answer all the useful purposes of an assessment giving the names of all the owners. And it is not claimed that, as a matter of fact, anyone was deceived or misled, or that any injury was done by the assessments, made as they were. And again, the statement in the assessment, as evidenced by the certificate of sale which must be taken to be true, is that the lot "was assessed to R. M. Patton in 1860," under State authority. If so, the Direct Tax Commissioners were bound to assess it in the identical same way, as the act of Congress in terms required them to adopt and follow the State assessment. Therefore, they could not have committed an error in making the assessment in the name of Patton alone.

And under the revenue laws of Tennessee an assessment and sale of land for unpaid taxes in the name of one not its owner, does not invalidate the sale, or the title of the purchaser.

2. The designation "part of Manly tract," was merely a mistake. There was *no* Manly tract, at least there is no claim nor evidence there was any, and hence, no possibility so far as the record discloses, that anyone could have been misled by the designation. The balance of the description in the assessment, to-wit: "Lot 31, 6 58-100 acres, assessed to heirs of McKinley in 1860, 5th Civil District, (country)," it is not claimed was incorrect; and, as it was sufficient of

itself, to identify the property, it corrected the erroneous statement that the lot was a part of the Manly tract, and prevented any uncertainty resulting therefrom. An error in a description in an assessment is not fatal, if, notwithstanding the error, there is enough in the description to lead to the ascertainment of the property intended to be taxed.

And further, suppose there was an error in the description, the Commissioners were required to adopt and follow the State assessment made next prior to 1st January, 1861, and must, in absence of proof to the contrary, be presumed to have done so. If there was an error, then it was in the State assessment; and as the act of Congress, in effect, adopted the description from the State assessment with the error in it, it thereby cured the error, and laid the tax on the lot by the description in the State assessment, and required that all the subsequent proceedings should conform thereto.

How then could the error, if there was one, affect the sufficiency of the description, or impair the title of the purchaser at the sale?

I submit that unless the descriptions in the sales to Sherry were so defective as to be absolutely inapplicable to the property in controversy, the court must now hold them good and sufficient.

It is probable, also, in this view, that the purpose of the last clause of section 13 of the act of Congress of 7th June, 1862, was to cure just such errors as those now under consideration.

It is in these words: "And no mistake in the valuation of the same or in the amount of the tax thereon, shall in any manner whatever affect the validity of the sale of the same, or of any of the proceedings preliminary thereto."

I have noticed the only specific objections made in the bill to the descriptions of the lots. In an assessment for taxes it is utterly impossible to go into minute particulars. It is impracticable to state boundaries, for instance, or do anything more than give a very general description of each particular lot or tract. Especially is this true where, as in Tennessee, there have been no surveys by sections, ranges and townships, similar to the system of surveys of the public lands adopted by the National Government, and no brief designation of the smaller tracts by reference to the authorized or usual subdivisions under such a system.

As already shown, the McLemore and Weakley grant was a public grant made to them by the State of Tennessee of a tract of 1,456 acres of land, of which the boundaries were given in the grant, and which was first divided between them, and afterwards was subdivided and laid off into lots, which were numbered, and whose areas were indicated on the plats of the subdivision, which plats were put of record in the office of the Register of Shelby county, and also on the published maps of the city of Memphis and its suburbs, which maps were referred to in the testimony in the cause. In the assessments those numbers and the areas of the respective lots were correctly given, and one lot was assessed as the property of McKinley's heirs, and the other as the property of Patton.

These descriptions were certainly not void for uncertainty, nor are they false, as has been shown, in any essential particular. It was

feasible to perfect any omission, or correct any misstatement in them by extraneous proof or by reference to known or admitted facts; and, taken in connection with such known and admitted facts, and such proof as appears in the record, there could be no doubt about the lots they were designed to describe.

Dr. Thomas readily pointed the lots out on the map, when testifying. Governor Patton, in his deposition, located them merely by reference to their numbers, and the conveyances in the record in effect, contain descriptions by numbers and area.

On the sufficiency of descriptions in general I refer to

Fancher v. De Montegre, 1 Head, R., p. 40, 41; *Parker v. Swan*, 1 Humphreys, R., p. 80; *Gibbs v. Thompson*, 7 Humphreys, R., p. 179; *Vance v. McNairy*, 3 Yerger, R., p. 171; *Lafferty v. Conn*, 3 Sneed, R., p. 221; *Trotter v. Nelson*, 1 Swan, R., p. 7; Cooley on Taxation, p. 284.

II.

The acts of Congress under which the sales were made are unconstitutional.

This question I take to be settled by the decisions heretofore made by this court.

Bennett v. Hunter, 9 Wallace, 326; *Corbett v. Nutt*, 10 Wallace, 464; *Cooley v. O'Connor*, 12 Wallace, 391; *Turner v. Smith*, 14 Wallace, 553; *Tacy v. Irwin*, 18 Wallace, 548, and other cases.

III.

The objection that the assessment was excessive and unauthorized, is not supported by any evidence, and may be laid out of the case. The act of Congress (see Sec. 14) provided for a record showing the amount of the tax apportioned to each tract or lot, and a copy of that record would have proved or disproved the grounds of the objection. But, had the facts been proved as stated in the bill, I submit the last clause of section 13 of the act of 7th June, 1862, would have prevented their impairing the validity of the sale.

IV.

The fourth objection is that the Commissioners failed to advertise the property for sale, as required by the act of Congress, whereby the sale was made void.

The particulars in which the advertisement is objected to, have already been enumerated, and will not be repeated, as I do not propose to notice them in detail.

The point I rely upon is this: By the 7th section of the act of Congress of 7th June, 1862, 12 Statutes at Large, p. 423, the certificate of sale granted by the Direct Tax Commissioners is not only made

prima facie evidence of *all* the facts essential to the regularity and validity of the sale, and the title of the purchaser thereunder, but is made conclusive and final proof of every such fact, with three exceptions. The party attacking the title of the purchaser under the act, is at liberty to prove in opposition to the certificate of sale granted by the Commissioners: 1. That the property was not subject to the taxes; 2. That the taxes had been paid before the sale; and 3. That the property had been redeemed after the sale in pursuance of the act. Of every other fact material to the sale or the title under it, the certificate of sale is conclusive, and nothing can be heard or considered by the court in opposition to it. In this case, neither of the three disputable facts is disputed. For instance, it is not claimed the property was not subject to the taxes, nor that the taxes were paid before sale, nor that the property has been redeemed since the sale. All these facts are admitted to be with the plaintiffs in error. It follows, therefore, that if my position upon the effect of the statute is correct, the sufficiency of the advertisement is not open for inquiry, but must be assumed conclusively to have been, in all respects, such as the law required it should be.

About the construction or interpretation of the act of Congress there can be no difficulty.

And if the act is not unconstitutional, my position upon it must be admitted.

In the brief for the plaintiff in error, in No. 108 on the present docket, *Keely v. Sanders*, I have argued this question at some length, and as I suppose that case and this will be considered together, to save repetition, I refer for what I have to say on the questions to pages 9–12 of the brief.

I will only refer again to the authorities I there referred to.

Blackwell on Tax Titles, *p. 79 and cases.

Murray's Lessee v. The Hoboken Land and Improvement Co., 18 Howard, 272; *Pullan v. Kinsinger*, 2 Abbott's U. S. R., 94; *Steadman v. Planters' Bank*, 2 English, 424; *Bettison v. Budd*, 17 Arks. R., p. 566; *Thomas v. Lawson*, 21 Howard, 332; *Allen v. Armstrong*, 16 Iowa R., p. 508; *Vance v. Schuyler*, 1 Gilman (Ills.), 160; *Messenger v. Germain*, 1 Gilman, 631; *Rhinehart v. Schuyler*, 2 Gilman, 473; *Gwynne v. Neiswanger*, 18 Ohio R., 400; *Henderson v. Sterrett*, 4 Sneed, 470; *Tharp v. Hart*, 2 Sneed, 569; *Pillow v. Roberts*, 13 Howard, 472; *Sharpleigh v. Surdam*, 11 Western Jurist (for year 1877), p. 203. Even the case of *McCready v. Sexton*, 29 Iowa, 356, goes far enough to sustain the act of Congress. And see *Smith v. Cleavland*, 17 Wisconsin R., 556

V.

The last point to be noticed is the one on which the Supreme Court of Tennessee based its decision. See opinion, record, pp. 66–68, and decree, pp. 65–66. It is this: That the military authority of the United States had not been established throughout the district when the Direct

Tax Commissioners entered on the discharge of the duties of their office and made the sales to Sherry.

1. Upon the facts in this record, which have already been detailed, I submit the military authority of the United States *had been established* throughout the whole of Shelby county within the meaning of the act of Congress before the Tax Commissioners entered on the duties of their office, or made the sales to Sherry.

See *Butler v. Maples*, 9 Wallace, p. 766.

2. If I am mistaken in the position that the military authority of the United States had been established throughout Shelby county before the Tax Commissioners entered on the duties of their office, or made the sales to Sherry, then I insist it was necessary only that such authority should have been established throughout the civil district of the county in which the lots sold were situated, and as such authority was so established throughout such district the requirements of the act of Congress were satisfied.

Sharpleigh v. Surdam, 11 Western Jurist (for 1877), p. 203.

3. The act of Congress of 7th June, 1862, section 6, so far as it undertook to require that the military authority of the United States should be established throughout the district before the Direct Tax Commissioners should enter on the discharge of the duties of their office, was directory merely to the Executive Department of the Government, and was not mandatory. When that department had determined such authority had been so established, and that the proper time had arrived, and the Commissioners really entered on and continued in the discharge of their duties, the question whether the authority had been established ceased to be of any further practical importance, and was closed and settled forever. Whether the time so fixed upon was or was not the exact time the statute contemplated, was, after that event, no longer debatable. The theoretical question whether the Executive Department had fixed the correct time was merged in the practical fact that the Direct Tax Commissioners had already entered on the discharge of their duties.

French v. Edwards, 13 Wallace, pp. 506, 511; *Luther v. Borden*, 7 Howard, p. 1.

4. If the last position is not true then I insist the question, whether the military authority of the United States had been established throughout the district, was, by the act of Congress itself, submitted for decision to the Executive Department of the Government, which was thereby made the sole and exclusive judge thereof. By the very terms of the act the decision of the question in the affirmative was required to be made *before* the Direct Tax Commissioners entered on the discharge of the duties of their office. Therefore, as soon as the Tax Commissioners had, under the sanction of the Executive, entered on their duties, it had been, for all practical purposes, definitely settled and fixed by the only tribunal having power to pass upon the question that the military authority of the United States had been established throughout the dis-

trict. As the determination that such authority had been so established was, by the act of Congress, to precede the entering by the Commissiones on the discharge of the duties of their office, it follows that the fact that the Commissioners *did enter* on the discharge of their duties not only pre-supposed the prior establishment of the military authority throughout the district, but is evidence as well of the *fact* of such establishment, as of the other fact, that the Executive Department *had decided* that such authority had been so established.

United States v. Morris, 10 Wheaton, *p. 246; *Martin v. Mott*, 12 Wheaton, 19; *Foster v. Neilson*, 2 Peters, 253, 307, 309; *Garcia v. Lee*, 12 Peters, 511, 516, etc.; *Williams v. Suffolk Ins. Co.*. 13 Peters, 415; *Luther v. Borden*, 7 Howard, p. 1; *Kennett v. Chambers*, 14 Howard, 38; *Phillips v. Payne*, 92 U. S. (2 Otto), 130; *Prize Cases*, 2 Black, 635, 668–671; *U. S. v. Anderson*, 9 Wallace, 56, 68–72; *The Protector*, 12 Wallace, 700; *Burke v. Miltenberger*, 19 Wallace, 519; *Hamilton v. Dillin*, 21 Wallace, 73; *Bank of U. S. v. Dandridge*, 12 Wheaton, 70; *Winder v. Sterling*, 7 Ohio (Pt. 2), p. 190; *Williams v. East India Co.*, 3 East, 192; *Robinnett v. Preston*, 4 Grattan, 141.

No power has been given the courts to determine independently for themselves how the fact was, nor to review the decision of the Executive department that the military authority had been established throughout the district before the Commissioners entered on the discharge of their duties. The courts, therefore, are bound to accept the action of the Executive department as conclusive, and to permit no question about its propriety to be agitated.

One consideration alone ought to be conclusive in favor of this view: Were it within the jurisdiction of the courts to try the question whether the military authority had been established throughout the district before the Commissioners entered on the duties of their office, as one of fact, to be determined upon the evidence introduced in each particular case, there could be no uniformity of decision, and the question could never be settled.

In one case the power of the Commissioners to make the sale might be held to have existed, and in another not to have existed, and a title would pass or not pass, according to the view the court or jury might take of the evidence before them, though the real facts were the same in each case.

The principle applicable to the acts of officers *de facto*, where the public has an interest in them, ought to apply here, if the Commissioners did in fact enter on the duties of their office ahead of the proper time, and ought to protect those who, like the plaintiffs in error, have acquired rights on the faith of the official acts of the Commissioners.

Blackwell on Tax Titles, *p. 91–105, and cases cited.

October 8th, 1878.

WM. M. RANDOLPH,
Of Counsel for Pltffs. in Error.

PATRICK SHERRY AND DENNIS SEXTON,

PLAINTIFFS IN ERROR.

VS.

ANDREW McKINLEY, ET AL.,

DEFENDANTS IN ERROR.

Supreme Court of the United States,

NO. 116.

IN ERROR TO THE SUPRUME COURT OF TENNESSEE.

BRIEF OF J. B. HEISKELL,

COUNSEL FOR DEFENDANTS IN ERROR.

PRICE, JONES & CO., PRINTERS, MEMPHIS.

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I.

For the defendants in error, it is insisted that the action of the Commissioners for Tennessee, in regard to the land in controversy in this cause, and all lands in Shelby County, Tennessee, was premature and void, and that said lands "were not subject to taxes" at the time of the assessment and sale, because "the military authority of the United States had not been established throughout the County" of Shelby. Attention is called to this provision of the Act. The military authority must have been established "*throughout*" a county before the Commissioners could enter upon their duties in such county. And, of course, until they could enter upon their duties in the county, the lands therein were not subject to be taxed.

See 12 Stat. at Large, p. 422–4.

The proof is abundant and clear that the military authority of the United States was not established throughout Shelby County at the time of the assessment and sale of this land.

See depositions of Morgan and Williamson, Record, pp. 14–16.

The word *district*, in the Act, in connection with *county* and *parish*, means a sub-division of a State, known as a district, as in South Carolina. District was intended for South Carolina, Parish for Louisiana, and County for all the other States. It is ridiculous to construe district as a sub-division of a county, known in Tennessee as a *civil district*, and in most States as a township.

In the Act of July 13, 1866, 14 Stat. at Large, page 110, which is in reference to collecting internal revenue taxes, and provides for selling land where there is no personal property, we find county thus defined: "*Provided*, That the word 'County,' whenever the same occurs in this Act, or the Acts of which it is amendatory, shall be construed to mean a parish, or any other equivalent sub-division of a State or Territory."

As to what constitutes military occupation, see *The Venice*, 2 Wall., 258. *Apperson vs. Bynum*, 5 Cold., 341.

It is a part of the history of the country, and is also shown in this record, see Parish's dep., and the advertisement of sale, Record, 48, 51, that no sales were made or attempted in Shelby County, or in West Tennessee outside of three civil districts of Shelby just around Memphis. Now could there be stronger evidence that there was no military occupation "*throughout*" the county? And could it have been intended to tax lands just around military camps, and let all the remainder of the country go untaxed? Suppose the attempt had been made to tax the entire lands of Shelby County? The result would have been that the land owners could not have got through the picket lines to pay their taxes or redeem their lands. And portions of the three civil districts in which sales were attempted, were outside of these picket lines around Memphis.

Evidently, the intention of the Act was, that the occupation should be "*throughout*" the county, parish or district, and that it should be so complete that the land owners should have free ingress and egress to and from the office of the Commissioners.

But it is insisted for the plaintiffs in error, that this question of military occupation is not one to be enquired into by the Courts, but was for the military or political power to determine, and that it was determined that there was such military occupation as the Act requires.

The answer of the Supreme Court of Tennessee to this is

sufficient. There is nothing in the records of the Commissioners or the certificates under which plaintiffs in error claim showing that such occupation was had. It cannot, therefore, be assumed in favor of the title of the plaintiffs in error.

But we think there is a more conclusive answer. The records of the Commissioners not only fail to show a military or political determination that the military authority was established "*throughout*" Shelby County, but, on the contrary, they show affirmatively, that it was never assumed to be established except in three civil districts of the fifteen (at least) of said county, viz: the 5th, 14th and 15th.

See Notice of sale—Record pp. 50, 51.

II.

We insist further, that if the decision of the Supreme Court of Tennessee cannot be maintained on the foregoing proposition, it is right on other grounds. This sale was absolutely void, and defendants in error were not precluded from so showing by the certificate given to the purchaser.

This involves a construction of the Act under which the sale was made.

12 Stat. at Large, p. 422–4.

For the purchasers, it is insisted that the certificate is conclusive evidence of title, unless it can be shown that the land was not subject to taxes, or that the taxes had been paid previous to the sale, or that the land had been redeemed. We insist that it is never conclusive, but only *prima facie* evidence.

By Section 7 of the Act of June 7, 1862, it is enacted in the body of the Act, as follows:

"Which said certificate shall be received in all courts and places as *prima facie* evidence of the regularity and validity of said sale, and of the title of said purchaser or purchasers under the same."

Afterwards in the same section, there is a proviso as follows:

"*And provided further*, That the certificate of said Commissioners shall only be affected as evidence of the regularity and validity of sale by establishing the fact that said property was not subject to taxes, or that the taxes had been paid previous to sale, or the property had been redeemed according to the provisions of this Act."

In order to arrive at the meaning of this Act, all parts of it must be construed together. 1 Black. Com., side p. 89. And it shall be so construed, if possible, as to give effect to every part of it. *Id.*, and Sedgwick Stat. and Com. Law, p. 237–8.

It is only when a proviso to an Act is directly repugnant to

the main body of the Act that the proviso shall stand and be held to be a repeal of the purview of the Act, because it speaks the last intention of the law-maker. Sedgwick, p. 62. As to definition of a proviso, *Id.*, and Bouvier L. D.; Title Proviso, Dwarris, 118, and notes.

Judge Story, in United States vs. Dickson, 15 Peters, 141, at p. 165, says it is "a general rule of law, which has always prevailed, and become consecrated almost as a maxim in the interpretation of statutes, that when the enacting clause is general in its language and objects, and a proviso is afterwards introduced, that the proviso is construed strictly, and takes no case out of the enacting clause which does not fall fairly in its terms."

The body of this Act makes the certificate *prima facie* evidence of the regularity and validity of the sale. The proviso says that it can only be affected as evidence "of the regularity and validity of sale" (using the same language as the body of the Act) by establishing the fact that the land was not subject, &c. Now what kind of evidence? Most clearly *prima facie* evidence. To give the proviso any other meaning is to discard the body of the Act entirely; and this cannot be done because the proviso is not directly repugnant to it. Both can very well stand together if *prima facie* evidence is meant in both. But if the proviso is construed to make the certificate conclusive evidence, then it overthrows the body of the Act, which makes it only *prima facie*.

The certificate makes a *prima facie* case against all parties who cannot show the land was not subject to taxes, or the taxes paid before sale, or the land redeemed. But it is not conclusive against anybody who can rebut it by showing the sale void for want of proper notice, or anything else which would invalidate it.

This interpretation of the Act is in accordance with the decisions of the State courts generally.

See Blackwell on Tax Titles, pp. 78–91.

The question is also raised and discussed by Blackwell as to the power of the Legislature to make the deed conclusive. The Legislature should have no such power.

Congress does not seem inclined to assume such power. In sales of land for the Internal Revenue tax, the deed is only *prima facie* evidence.

14 Stat. at Large, p. 108.

The case of Cooley vs. O'Connor, 12 Wall., 391, puts this interpretation upon the Act. Mr. Justice Strong, in the opinion of the Court, says: "Had the certificate been admitted, it

would by force of the statute have amounted to *prima facie* evidence, as well of the regularity and validity of the sale as of the title of the purchaser. It would, therefore, have cast upon the plaintiff (the original owner of the land) the burden of showing affirmatively that the sale was irregular and invalid, and that the title was not in the United States." This seems conclusive. And in that case the Court below passed on the validity of the publication of sale, and the Supreme Court seemed to regard this as a question to be inquired into.

The irregularities and defects are numerous, but we need allude only to one, as the want of notice, as proved by witness, Parish, Rec. 48 *et seq.*, renders these sales absolutely void. Notice is essential, and must be given in the time and manner prescribed by law.

Blackwell Tax Sales, p. 215 *et seq.*, to 251.

The deposition of Parish shows that four weeks notice was never given, as required by the Act, section 7. The 13th of June was fixed as the day of sale; and even if the continuation after that day was valid, which is questioned, (Blackwell, 275–6 Am. Law Reg., New Series, vol. 2, p. 721–2), the publication must have been four weeks preceding the day fixed in it for the beginning of the sales—Blackwell, 275; so that though these sales seem to have been made later than June 13th, yet it was on the theory that the Commissioners could adjourn the sales from day to day; and the publication not having been four weeks prior to June 13th, the sale was void. So also nothing can be claimed from the fact of the continuation past June 13th, and up to the date of this sale (June 25th), because the notice was not continued. There must have been four weeks notice immediately preceding the sale.

Blackwell, 237, 3 La., 418.

And this is even so in a sale under a trust deed. Stine vs. Wilkinson, 10 Mo.

Hill on Trustees, 480 Am. Law Reg. N. S. vol. 2, p. 720.

The notice was also insufficient and the sale void, because given in the "Extra Bulletin," distributed, as Parish proves this was—Blackwell 243. Does not Parish's deposition prove a fraud perpetrated by these Commissioners, both upon the government and the land owners?

III.

The counsel for plaintiffs in error assign for error the dismis-

sal of the cross-bill of Sexton, claiming compensation for improvements.

We suppose this is not a question to be reviewed by this Court, but the decision of the State Court was manifestly correct. The original bill was filed May 7, 1867. Record p. 1, and Sexton's dep. Record p. 27, shows that these improvements were begun in April, 1869. Such a claim for improvements is not even a set-off against rents in Tennessee.

Code of Tenn., Sec. 3259–3261. 4 King's (Tenn.) Dig. p. 96 *et seq.* McKinley vs. Holliday 10 Yer. 477. Avent vs. Hord, 3 Head 458.

J. B. HEISKELL,
Counsel for Defendants in Error.